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AUTHOR	Garcia, Jose D.: Minkler, Elton D.
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ABSTRACT

Designed to provide the prospective subgrantee with information necessary to plan, develop, and administer a Title I Migrant project in accordance with federal and state requirements, the manual presents extracts from federal statutes and regulations, Oregon Revised Statutes and Oregon Administrative Rules, Oregon Department of Education operational guidelines, U.S. Office of Education Policy Briefs, and U.S. Office of Education "Final Regulations" (November 13, 1978) as printed in the "Federal Register". Directions for using the Migrant Student Record Transfer System to aid in determining student eligibility, identification, and recruitment are provided. Aspects of proposal preparation discussed include comprehensive needs assessment: objectives: statement of activities: evaluation methods, techniques, and instruments: proposal review: personnel: and salaries. Support service operation guidelines for day care programs, home-school consultants, nutritional services, health services, clothing programs, and transportation of migrant pupils are outlined. Regulations require assurance of effective parental involvement through the state program, such as the use of interstate or local parent councils. A glossary of terms specific to Title I documentation is also provided. (NEC)

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PROJECT DIRECTOR'S MANAGEMENT MANUAL

RECEIVED

Migrant Education Projects

Title I Migrant Amendment
Public Law 89-750

Oregon Department of Education
Salem, Oregon 97310

Verne A. Duncan
State Superintendent
of Public Instruction

RG 011730

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

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PROJECT DIRECTORS' MANAGEMENT MANUAL

MIGRANT EDUCATION PROJECTS

Title I Migrant Amendment

Public Law 89-750

Fall 1979

Oregon Department of Education
700 Pringle Parkway SE
Salem, Oregon 97310

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TABLE OF CONTENTS

		Page
INTRODUCTION		v
PART I:	Glossary	1
PART II:	Summary Reference to State and Federal Laws, Statutes, Rules Relating to Title I Migrant Projects	9
PART III:	Migrant Student Record Transfer System and Student Eligibility, Identification and Recruitment	19
PART IV:	Program Development and Project Identification	31
PART V:	Support Services	49
PART VI:	Parent Involvement	57
PART VII:	Fiscal Management	61
Federal Register, November 13, 1978		73

INTRODUCTION

The purpose of this manual is to provide the prospective subgrantee with information necessary to plan, develop and administer a Title I Migrant project in accordance with federal and state requirements. The manual presents extracts from:

(1) U.S. Office of Education "Final Regulations," November 13, 1978, for Title I-M projects,

(2) federal statutes and regulations,

(3) Oregon Revised Statutes and Oregon Administrative Rules,

(4) Oregon Department of Education operational guidelines, and

(5) U.S.O.E. Policy Briefs.

Questions of project quality are not dealt with in this manual. The Department of Education's Title I-M staff is concerned about the quality of Oregon's Title I-M projects, however, and all proposals are reviewed for funding approval with as much concern for project quality as for compliance. All evaluations and project reviews will be conducted with the thought of improving project effectiveness as well as assisting project staff to administer the project in compliance with all requirements.

Jerry Fuller
Director of Compensatory
Education Section

Authors

Jose Garcia
Coordinator of Title I
Migrant Education Unit

Elton D. Minkler

PART I

Glossary

Agricultural activity - Any activity related to crop production, including but not limited to, soil preparation and storage, curing, canning or freezing of cultivated crops; activities on farms and ranches related to the production and processing of milk, poultry, livestock (for human consumption); cultivation and harvesting of timber, and activities related to tree nurseries.

Allocation - Amount of funds allocated by the Oregon Department of Education to an eligible agency after having approved the project proposal of that eligible agency.

Area - A specific geographic area of the state designated by the Oregon Department of Education for the purpose of better administration and coordination of Title I Migrant programs in that area.

Area project - All Title I Migrant activities in an area under the supervision of the area director. The area director is a staff member of the agency that has been granted an allocation to administer projects in that area.

Average Daily Attendance (ADA) - Total days of attendance of all students divided by the official number of days taught during the project term.

Average Daily Membership (ADM) - Total days of all students who were enrolled during project session divided by the official number of days taught during the session.

Application review process - A system used by the Oregon Department of Education to evaluate applications for allocation of ESEA Title I Migrant education funds.

Beginning date of project - The date an approvable project proposal has been received in the Title I-M coordinator's office.

Certificate of Eligibility - A form adopted by the Oregon Migrant Education Program for use in identifying all eligible migrant children in the state. This form must be completed for the child to be officially entered on the Migrant Student Record Transfer System.

Certified staff - Refers to any staff member in a local project who under Oregon state law must be certified to perform instructional, supervisory or administrative services in a public school system.

Currently migratory child - A child who has moved with a parent or guardian within the past twelve months across a school district boundary or boundaries in order that a parent, guardian or member of his or her immediate family might secure temporary or seasonal employment in an agricultural, fishing or timber harvesting activity.

Data specialist - The person trained in operating the MSRTS teletype terminal.

Date of enrollment - Recorded by the school district clerk on an enrollment roster and sent to the teletype terminal operator.

Date of ID - Identifies children not old enough to participate in kindergarten but mature enough to benefit from participation in an educational program; minimum age is three years. This service can be provided with ESEA Title I-M funding.

Date of identification - The date a child is identified as entering a school district (or state).

Day care - Service which can be provided with ESEA Title I-M funds if approval is granted through the Oregon Department of Education by the U.S. Office of Education; refers to children not old enough to participate in kindergarten but mature enough to benefit from participation in an eduational program; minimum age is three years.

Days enrolled - The official number of school days that transpire between the date the student enrolls and the date of his or her withdrawal or the date of project termination.

Dental care - As used in this document, only emergency dental care services are paid for with Title I-M funds. Such services would include diagnosis, referral, treatment and follow-up of critical dental problems.

Educationally deprived child - Any child who has need for special educational assistance in order that his or her level of educational attainment may be raised to that appropriate for a child of that age. The term includes the child who is handicapped or whose need for such special programs result from poverty, neglect, delinquency, or cultural or linguistic isolation from the community at large.

Federal Domestic Assistance Catalog - Comprehensive listing of all federally funded programs with a listing of federal ID numbers assigned to each program.

End-of-project financial status report (Form HEW-601T) - A fiscal report required by the Oregon Department of Education migrant unit that must be filed within 30 days after the close of the local projects.

Evaluation reports - Items required pursuant to Section 116.43 of Title I rules and regulations.

Federal assurances - Forms which must be signed by an authorized official before a project application can be considered for approval by the Oregon Department of Education; provides assurance that the local project will abide by pertinent federal rules and regulations.

Fiscal year - The state fiscal year is from July 1 to the following June 30. The federal fiscal year is from October 1 to the following September 30.

Fishing activity - Any activity directly related to the raising and catching of fish and shellfish from streams, lakes and oceans, and to the processing of such fish for initial distribution through commercial market channels.

Formerly migratory child - A child who, with the concurrence of his or her parents, is deemed to be a migratory child on the basis that the student has been a currently migratory child within the past five years but is not now migrant.

FTE (full-time equivalency) count - A component of the formula used to determine the amount of national Title I-M annual funding and the individual state entitlement; the determining factor being the number of days an eligible student is enrolled in the project(s) compared to the maximum possible days of enrollment.

Interstate agricultural and fishing migrant - A child who has moved with a parent or guardian within the past year across state boundaries in order that a parent, guardian, or member of his or her immediate family might secure temporary or seasonal employment in agriculture, fishing and/or related food processing activities.

Intrastate agricultural and fishing migrant - A child who has moved with a parent or guardian within the past year across school district boundaries within a state in order that a parent, guardian or member of his or her immediate family might secure temporary or seasonal employment in agriculture, fishing and/or related food processing activities.

Instructional services - For purposes of this manual, any direct supplementary services provided to eligible children by a local agency would fall into the instructional cost category on the budget sheet.

Kindergarten child - Under Oregon state law, ORS 336.092, refers to "...a child in the year immediately prior to enrollment in the first grade."

Local advisory committee (LAC) - A required component of a local project; should provide a means for community and parent input during the design, operation and evaluation of a project. A minimum of 51 percent of the council members must be parents of children eligible to participate in Title I-M projects.

Local operating agency - Denotes the local agency or sub-grantee with an approved project as the legal entity responsible for carrying out the provisions listed in the approved project application.

Local educational agency (LEA) - A public board or other public authority legally constituted within a state for either administrative control or direction of, or performance of a service function for, public elementary or secondary schools in a city, county, township, school district or other political subdivision of a state. Also, any combination of school districts or counties as are recognized in a state as an administrative agency for its public elementary or secondary schools.

Mandatory school age - It is stated in ORS 339.010 that all children between ages of 7 and 18 years who have not completed the 12th grade must be enrolled in school. ORS 339.030 provides some exceptions.

Medical care - Family consultation, referrals, follow-ups, record keeping, screening and emergency services related to medical and dental services; preventive medical care is covered by this term.

Migrant Education Service Center (MESC) - Central office funded by Title I-M providing coordinated services: the Migrant Student Record Transfer System (MSRTS), migrant education statewide inservice, staff development activities, project self-evaluation, project monitoring and other requested services.

Migrant Program Allocation Sub-System (MPAS) - Used by the MSRTS Central Depository to determine full-time equivalence (FTE) of migrant pupils in a given state for purposes of general funding of ESEA Title I Migrant education programs.

Migrant project applicant (MPA) - Any eligible agency which has submitted or has expressed an intent to submit an application (project proposal) to the Oregon Department of Education for Title I-M fund allocation to plan and/or implement a project for students eligible to participate in Title I-M projects.

Migrant status (MS) - Refers to the following classifications of eligible migrant children: 1) interstate agricultural migrant, 2) intrastate agricultural migrant, 3) formerly agricultural migrant (five-year), 4) interstate migratory fishers, 5) intrastate migratory fishers, 6) formerly migratory fishers (five-year).

Migrant Student Record Transfer System (MSRTS) - A national computerized pupil record storage and retrieval system designed to help provide continuity of education for migrant children, centered in Little Rock, Arkansas, under contract with the U.S. Office of Education.

MSRTS Central Depository - The computer storage and processing facility in Little Rock, Arkansas.

MSRTS records clerk - The person in a local agency delegated the responsibility of collecting and recording all pertinent pupil data on a timely basis on the MSRTS transfer record and medical forms and transmitting such information to the teletype terminal location.

Migratory agricultural workers - Those who have moved from one school district to another in the same state or to a district in another state to find temporary or seasonal employment in one or more agricultural activities. (See "Agricultural activity.")

Migratory fishermen - Those who have moved from one school district to another in the same state or to a district in another state to find temporary seasonal employment in one or more fishing activities. (See "Fishing activity.")

Migratory timber harvesters - Those who have moved from one school district to another in that state or another state to obtain temporary or seasonal employment in timber harvest activities. (See "Timber harvester.")

Monitoring and evaluation - The process used by the Oregon Department of Education to provide information to the local agency, the O.D.E. and U.S.O.E. regarding project strengths, weaknesses and problem areas.

Non-certified staff - Persons hired by a local agency to accomplish the goals set forth in the project application who are not required by law to be certified, such as bilingual aides, MSRTS clerks and home-school consultants.

Non-project school - A school which has eligible migratory children residing within its attendance area, but is not funded for a project under ESEA Title I Migrant Education, may be either public or private. For example, the school may have too few eligible children to warrant the implementation of a full-scale project.

Notification of Project Approval (Form 581-3140) - A three purpose form to: (1) Notify the LEA of amount of grant approved indicating beginning and ending date of project, (2) Make quarterly requests for funds from Oregon Department of Education business services, and (3) Return unexpended funds to Department 90 days after the project terminates.

Ongoing evaluation - A process employed by project staff members to determine the strengths and weaknesses of the project activities in order to make the necessary modifications.

Operating agency - The local agency actually carrying out activities for migrant children under an approved application.

Oregon Department of Education - The legal entity of the State of Oregon which serves as the SEA.

Parent advisory council (PAC) - (See Local advisory committee.)

Performance indicator - Projected outcome of an activity incorporated in the project. To be meaningful, the performance indicator must be realistic, observable and measurable. Sometimes referred to as a project activity.

Preschool program - Any formal instruction program including kindergarten designed for pre-first grade children sufficiently mature to benefit from such a program.

Project - A Title I-M funded educational or support service activity or set of activities administered by an SEA, LEA or other qualified agency for one or more migrant students.

Project officer - The state agency staff person assigned to assist a local project; responsible for communication between the state agency and the local project.

Project proposal - An application for a Title I-M grant by an eligible agency which provides evidence of need to conduct a Title I-M needs assessment or to plan and implement a Title I-M project after a needs assessment has established the advisability of implementing a project and has provided information as to what activities should be incorporated in the project. A project proposal must provide evidence that the local PAC was involved in planning the project and has approved the proposals. To be approved, a project proposal must comply with both state and federal laws and guidelines and with policy established by the Oregon Department of Education and/or the state coordinator of migrant education.

Public Law 89-10 - The Elementary and Secondary Education Act of 1965 (ESEA) which provides for the education for disadvantaged children under various titles.

Public Law 89-750 - An amendment to Public Law 89-10 which provides authorization for programs specifically designed to meet the special educational needs of children of migratory agricultural workers.

Public Law 95-561 - An amendment to Public Law 89-750 which mandates parent advisory councils at the state level and local school district (operating agency) level.

Region - A geographic area of the state designated by the state coordinator of migrant education. The region will contain one or more area projects. Certain services are coordinated in the region which cannot be be efficiently and effectively provided on a statewide basis.

Regional consultant - An employe of the Department of Education or the Migrant Education Service Center who has been designated by the state coordinator of migrant education to be responsible for providing a specified region with technical assistance, staff development programs, consultation and other support services.

School age limits - ORS 339.115 provides that (except as provided in ORS 336.165) the district school board shall admit free of charge to the districts' schools all children between the ages of six and twenty-one residing therein. The board has authority to enroll students above or below these age limits.

Self evaluation - A process conducted by project staff members and the regional consultant to determine if the project activities are effective in achieving the project goals and, if so, whether the goals adequately meet student needs.

Staff development - Activities carried out either by the state agency or the local agency to improve skills and/or competencies of any or all staff providing instructional or support services to the migrant students.

State advisory committee - A group of 10 to 15 persons recommended by the parent advisory committees throughout the state and appointed by the State Superintendent of Public Instruction to advise the state coordinator of Title I-M programs. The committee also reviews and recommends approval of the annual Title I-M state plan and all project proposals.

State education agency (SEA) - The governmental agency responsible for statewide education program supervision and administration. The legal entity in each state recognized by the U.S.O.E as being the governing agency eligible to receive Title I-M funds and administer the Title I-M state program.

State coordinator of migrant education - The administrator of the Migrant Education Unit of the Compensatory Education Section of the Instructional Services Division, Oregon Department of Education. A person who the SEA holds responsible for development, operation and evaluation of ESEA Title I-M projects.

State entitlement - The total amount of Title I-M funds to be made available to the state for the fiscal year. The U.S. Congress has delegated this responsibility to the Commissioner of Education subject to congressional dictates.

State program - The implementation of the overall plan for services, activities, personnel and materials set forth in the state application for a grant to provide special education to migratory children.

Statute - An act of Congress signed into law by the President, or an act of the State Legislature signed into law by the Governor.

Supportive services - Include any service that may be properly listed under the supportive service cost category on the budget sheet, which aids the child to benefit from the instructional services.

Teletype terminal - The machine used to transmit all pertinent pupil data via direct computer linkage to the MSRTS Central Depository in Little Rock, Arkansas.

Term of project - The period of time between the project beginning date and the date of the last services provided by the project.

Title I-M program - Title I Migrant Education Program.

Timber harvester - Any person involved in activities pertaining to (and limited to) harvesting timber, including planting and falling trees, trimming and cutting trees into logs, disposing of unusable materials (such as slashings), loading and transporting logs to the mill.

Uniform Migrant Student Medical Transfer Form - Of the two forms used by the MSRTS, the one used to record and transfer medical background information regarding a pupil.

Uniform Migrant Student Educational Transfer Form - Of the two forms used by the MSRTS, the one used to record and transfer information about a student which is primarily academic in nature.

United States Office of Education (U.S.O.E.) - The federal agency within the Department of Health, Education and Welfare that has been assigned the responsibility of administering the national Title I, ESEA, Migrant Amendment programs; allocates funds and oversees the Title I-M programs of the 50 states.

PART II

Summary Reference

to

State and Federal

Laws, Statutes, Rules

Relating to

Title I Migrant Projects

A. Federal

1. Federal Statutes (Public Laws)

2. Federal Letters, Memos, Directives, Guides

B. State

1. Oregon Revised Statutes

2. Oregon Administrative Rules

3. Attorney General Opinion

C. Title I Migrant Coordinator's Memoranda

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A. FEDERAL

1. Federal Statutes

Public Law 90-247

Amends PL 874 as amended by PL 89-10 to provide authority for including in Title I Migrant programs the five-year migrant students after first obtaining in writing, evidence of concurrence of the parents.

See modification in 116d.12 in Part III, Eligibility, Identification and Recruitment Section.

Public Law 93-380, Sec. 438

Requires program administrator to develop an effective system at state educational agency (SEA) and local education agency (LEA) levels to assure that unauthorized persons do not gain access to student records.

Public Law 93-380, 116d.2

Authorizes states to include children of migratory fishermen in services provided by Title I Migrant funded projects.

Public Law 93-380, 116d.3

Provides requirement that all state applications be signed by the chief state school officer or designated representative, and that the application will include state attorney general certification that the agency submitting the application is so authorized under state law.

Public Law 93-380, 116d.9

Provides the SEA, if approved by the Commissioner, the authority to construct and equip school facilities; requires that title to such facilities and equipment be vested in the SEA (not the LEA in which the facilities and equipment are situated).

Public Law 93-380, 116d.31

Provides detailed information as to content of application (state plan) to be submitted to the U.S.O.E. by the SEA.

See also November 13, 1978 Final Regulations 116d.3

Public Law 93-380, 116d.33

Enumerates the responsibilities of the SEA to assure proper and efficient administration of Title I Migrant projects. Specifically these duties include:

1. Ensure that program management is in compliance with SEA assurances made to the Commissioner in the state plan.

2. Prepare state plan.

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3. Provide instruction to applicant agencies in proper management and operations procedures.

4. Review proposals of each applicant agency.

5. Provide fiscal control and funding accountability.

6. Design and prepare evaluation report.

7. Disseminate information.

Public Law 93-380, 116d.35

Provides criteria for five-year migrant students to participate in Title I Migrant projects.

1. Active migrant student cannot be prevented from participating and program effectiveness cannot be diluted.

2. There is on file documentary evidence the student is eligible.

3. There is on file the signature of the parent or guardian granting consent. This requirement deleted by U.S.O.E November 13, 1978 Final Regulations.

Public Law 93-380, 116d.38

Limits day care programs, requiring a specific application by the SEA to the Commissioner assuring that:

1. Service is not available from other agencies.

2. Program is essential to allow older siblings to attend Title I Migrant programs.

3. All school age students in the state eligible to participate in Title I Migrant projects are being presently served in Title I projects.

Public Law 93-380, 116d.34

The SEA shall promulgate appropriate rules to ensure that subgrantees who carry out projects funded by Title I Migrant shall avoid imprudent, wasteful, extravagant or otherwise improper expenditure of funds which would defeat the intent of the Act to meet the special education needs of the migrant children.

Public Law 93-380, 116d.36

"Comparable access" is defined here as meaning that migratory children must have access to all state and locally funded instructional and support services as are provided to the resident students by the LEA.

Public Law 93-380, 116d.37

1. The SEA when planning the state program, must consult with and consider the views of the parents of the children who will be, or are, participating in the projects.

2. One or more advisory council, comprised of eligible students' parents and other persons knowledgeable of migratory student needs, will be established in each state.

Public Law 93-380, 116d.40

Authorizes two or more SEAs to enter into joint projects and the participating SEAs with approval of the Commissioner, may designate one SEA to administer such project.

2. Federal Letters and Memoranda, Directives, Guides

October 31, 1967: Memo to Title I Migrant coordinators from John Hughes, Director, Compensatory Education, U.S.O.E.--Any significant change in a Title I Migrant state plan requires that an amendment be submitted to the U.S.O.E. at least 30 days prior to implementation of those changes.

May 1968: Circular No. A 89--Requires that grantee have submitted to SEA a computed indirect cost ratio and that this cost ratio be approved by the SEA prior to any allocation of Title I Migrant funds for indirect costs.

July 2, 1969: Memo to Chief State School Officers; Re: Program Guide #55; Leon Lessinger, Assistant Commissioner--Title I administrative funds are to be used for proper and efficient administration of Title I Migrant programs.

July 24, 1969: Circular Letter A 95--Provides the vehicle for implementation of Section 401(a) of the Intergovernmental Cooperation Act of 1968, requiring intrastate agencies exchange and review applications and state plans to be submitted to the U.S.O.E for funding.

August 14, 1970: Memo to Chief State School Officers; Re: Program Guide #60; Thomas Burns, Assistant Commissioner--Authorizes expenditure of Title I Migrant funds to purchase clothing for students eligible for Title I Migrant programs; stipulates conditions to be met.

November 9, 1971: Letter to State Title I Migrant Coordinator; Re: Student Eligibility--Supports the State of Oregon requirement that completed and properly signed Certificates of Eligibility be on file at the LEA for each student enrolled in Title I Migrant programs. See also October 31, 1967 memo, above.

June 20, 1972: Memo to Chief State School Officers; Re: Program Guide #77--

1. Funds provided by Title I Migrant, and property derived therefrom, will at all times be under control of and administered by a public agency.

2. Each SEA and LEA will maintain a complete inventory of all equipment acquired by Title I Migrant funds and costing $100 or more.

3. All proceeds from the sale or rent of property purchased with Title I Migrant funds will be credited to the federal government.

February 12, 1974: Program Directive, Notice M203-2*--Emphasizes requirement for submitting to the U.S.O.E. project summaries (or copies of project proposals) for each project approved at the state level. These summaries (or copies) to be submitted within ten days after state approval. (* Modified by 116d.6 U.S.O.E. "Final Regulations" included in Program Development Section.)

March 14, 1975: Program Directive M302-2.1--Outlines procedures for state Title I Migrant administrator to implement in order to comply with requirements for using data from the MSRTS for determining Title I Migrant state grants; eliminates the use of Labor Department statistics for this purpose.

December 16, 1975: Inst. M302-27--Authorizes state Title I Migrant administration to include five-year migrants in the MSRTS. These students will be included in the count that will determine the annual state allocation.

April 22, 1976: Program Directive Inst. M214.1--Encourages and provides authority for increased interstate cooperation in Title I Migrant programs. Provides authority for transfer of funds from one state to another state for the purpose of implementing interstate cooperative activities.

June 18, 1976: Program Directive M203.4--Requires that the Chief State School Officer or designated representative sign all applications for federal funds and all subsequent requests for amendments, supplemental funds or continuations.

1976: Response to request for clarification of guideline: Richard Fairley, Director, Division of Education for Disadvantaged--Clarifies need for Title I Migrant students to participate in Title I projects. States that "It is not true that every migrant students must receive services under Title I programs before he (or she) can be considered for participation in a program provided by Title I Migrant funds."

December 1976: U.S.O.E. Management Guide--The following list of minimum responsibilities of the State Title I Migrant Program Coordinator could also serve as criteria for self-inventory or outside evaluation of state management of Title I Migrant programs.

1. Determine location of migratory children.

2. Make an assessment of needs.

3. Develop state goals and objectives based upon needs.

4. Develop inservice training programs for administrators, teachers and aides--to be planned and supervised by the SEA.

5. Determine educational priorities.

6. Act as a public relations agent for the SEA by developing county, LEA and community acceptance of educational programs for migratory children.

7. Promote rapport and coordination between school and migrant community.

8. Promote coordination between local, state and federal agencies to secure and implement services from all available sources for migratory children; e.g., USDA for lunch programs, Public Health Services, Migrant Ministry, OEO, church day care centers.

9. Be directly involved in planning, designing, implementing, monitoring, and evaluating all migrant projects.

10. Attend national and regional meetings of State Migrant Coordinators.

11. Assist LEAs in migrant program development, making certain that programs are developed around the SEA educational priorities and objectives for migratory children. Programs should be concerned with children preschool through grade twelve. Use of adults from the migrant community as aides, cooks, etc., should be encouraged. This is especially helpful where children are bilingual. Projects should be developed to provide services for migratory children who are in the state during the spring and fall when regular school is in session. These children, in these cases, would receive services from the regular school with migrant funds providing supplementary services.

12. Approve and fund all projects.

13. Establish state guidelines in regard to requests for purchase of equipment and supplies.

14. Maintain a state inventory of all equipment purchased with migrant funds costing more than $300. Relocate this equipment when need no longer exists.

15. Pupil accounting must make certain that documentary evidence is on record at the LEA establishing the eligibility of migratory children; in the case of the "5-year migrant," a parental consent slip.

16. Supervise the Migrant Student Record Transfer System.

17. Be responsible for overall evaluation of the state program.

18. Develop a state application plan that is practical and intended to serve the special educational needs of migratory children.

19. Be responsible for the dissemination of information concerning the program.

20. Be responsible for expenditures under the program to make certain that LEA is supplementing and not supplanting.

21. Assure that materials and tests used in the program are suitable for the children being served.

B. STATE

1. Oregon Revised Statutes

The state statutes and rules described below are only those that specifically affect migrant education programs:

ORS 343.810--

- Defines migrant child as a child of compulsory school age who is in custody of migrant workers whether or not they are his parents.
- Defines migrant worker as an individual engaged in agricultural labor who does not reside in the county in which he is performing the agricultural labor.*
- Defines school districts as including intermediate education districts (changed to "educational service districts" by 1977 legislature).

ORS 343.830--

Authorizes school districts to: "Establish summer programs for migrant students to supplement the regular school program and provide instruction in those educational areas in which the migrant students need special help."

ORS 343.835--

Describes how a school district will qualify for state funds (if and when available) for migrant summer programs, and how the participating districts will be reimbursed for migrant summer school costs.

ORS 336.074--

Authorizes instruction in "more than one language in order that pupils whose native language is other than English can develop bilingual skills to make an early and effective transition to English."

2. Oregon Administrative Rules

OAR 581-24-090

Authorizes IEDs (ESDs) to provide services to school districts by contract or resolution. Contacts for services may be made with local school districts which are not a part of the county or counties encompassed in the IED (ESD) area. (This supports the implementation of the regional concept.)

OARs 581-37-005 through 581-37-030--

Authorizes employment of teacher aides, stipulating that the aide must be 18 years old, have a high school diploma or equivalent and have standards

*This definition may be recommended for repeal, as it conflicts with federal definition.

of moral character required of teachers. The functions of the aide have few limitations provided that the aide works under the supervision and leadership of the teacher. An aide shall never be used to supplant a teacher.

3. Attorney General Opinion - No. 6774 V. 35, P.262

This is the only Attorney General Opinion currently valid that has specific implications for Title I Migrant, especially preschool programs. It states that the State of Oregon may provide assistance to students attending nonparochial private schools in Oregon, but may not provide financial assistance to students attending parochial schools.

Also, the State of Oregon may contract with a private nonparochial school to educate students according to prescribed and approved curriculum, but may not contract with parochial schools.

C. TITLE I MIGRANT COORDINATOR'S MEMOS

Project Directors' Vacations - No Title I Migrant education project director will take a vacation during the period of two weeks prior to or two weeks immediately after the beginning of a regular term or summer term program.

In planning a vacation, a Title I Migrant project director must have the schedule approved by the administrator of the funded agency or by the state coordinator of migrant education.

Program or Budget Modifications - In planning changes in any Title I Migrant program that would require any substantial deviation from the budget or programs included in the approved project proposal, the following federal and state requirements must be applied:

- Any changes in Title I Migrant project sites, dates, or substantial changes in the program objectives or activities must first be approved by the state coordinator of migrant education.

- Any budget modification that requires a transfer of funds from one line item to another line item in excess of ten percent must first be approved by the state coordinator of migrant education. This ten percent applies to the lesser of the two items amended.

Out-of-State Travel - Any Title I Migrant director, project staff member, or advisory committee member will not receive Title I Migrant funds for out-of-state travel without prior approval of the plans and the projected fund disbursements by the state coordinator of migrant education.

Supplement vs. Supplant, Parallel and Duplicate Programs - Title I Migrant funds are provided for the purpose of administering programs that will supplement the programs supported by general funds and Title I allocations. Title I Migrant funds cannot be used to supplant or duplicate programs or activities funded with state, local, or Title I funds. Any services provided by the district funded by state, local, or Title I funds must also be provided without cost to the Title I Migrant students.

For instance, if a school district operates a preschool program with general or Title I funds, the migrant students should be included in these programs. Title I Migrant funds may not be used for separate or parallel programs for migrant preschool students enrolled in that school district.

If a teacher is paid with 50 percent Title I or district funds and 50 percent Title I Migrant funds, it must be distinctly spelled out the 50 percent segment of time devoted to Title I Migrant programs that will serve only those students eligible for Title I Migrant funded services. The type of services provided cannot be a duplication of the service provided by the teacher during the period of time he or she is paid with district or Title I funds and serves nonmigrant students.

In summary, no Title I Migrant funds can be disbursed to provide service for Title I Migrant students when similar or parallel services are provided by general funds or Title I funds to the nonmigrant students enrolled in the same school.

PART III

Migrant Student Record Transfer System

and

Student Eligibility, Identification and Recruitment

A. U.S.O.E. "Final Regulations," November 13, 1978

B. Operation Guidelines

C. U.S.O.E. Policy Briefs, Questions and Answers

A. U.S.O.E. "FINAL REGULATIONS," NOVEMBER 13, 1978

116d.12 Child Eligibility

An SEA or an operating agency shall not count a child under 116d.12 (to increase LEA project funding or SEA program funding) or provide program services to that child until the agency has:

(a) Determined that the child is either a currently or formerly migratory child, as defined under 116d.2; and

(b) Made a written record of the basis on which the child's eligibility was determined.

In determining eligibility, an SEA or an operating agency may rely on credible information from any source, including that provided by the child or his or her parent or guardian. An SEA is not required to obtain documentary proof of either the child's eligibility or civil status from the child or his or her parent or guardian.

(20 U.S.C. 241c-2; 1232c(a); 1232c(b))

Also refer to Part III, Program Development and Project Proposals

116d.32
116d.35

B. OPERATION GUIDELINES

Identify Clients

To qualify for funding, the grantee must first survey the geographic area served to determine the number of migrant students (K-12) that will be in the area during the period of time that the project will be operating. This can be done by identifying the migrant families having their home base in the area, and by interviewing representatives of other agencies, contractors, and growers to obtain a reasonable estimate of the labor needs and the projected size of the labor force that will be in the area during that period. If the district has been participating in the Migrant Student Record Transfer System, use data from that source.

Submitting Student Records

Any school district in which there are migrant students enrolled, whether or not it is administering Title I Migrant projects, should be participating in the MSRTS. Two criteria used by the Advisory Committee on Migrant Education and the Oregon Department of Education staff when reviewing a project proposal for recommendations of approval or rejection are whether or not the district has participated in the MSRTS and the number of eligible migrant students from that district that have been entered in the MSRTS records.

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The state allocation of Title I Migrant funds is based on the number of migrant students entered on the MSRTS records. Any district that is not reporting all eligible migrant students is not generating its proportionate share of funding.

Migrant Student Record Transfer System

The Migrant Student Record Transfer System was designed for the sole purpose of providing continuity to the educational and health services provided the migrant student. By being able to obtain a correct and complete record of the migrant student's educational and health history, the receiving district can better determine the student's needs and develop programs that will attend those needs.

The U.S. Office of Education has established the method of determining annual state Title I Migrant amendment allocations. Allocations are computed on the basis of the full-time equivalency of migrant students the state has processed through the MSRTS. This applies to all students who are identified by PL 89-750 including both active and five-year students.

It is important to complete and submit records on all migrant children. The records are helpful in improving the educational and health services of the student, and they are the basis for future allocations of migrant education funds to the State of Oregon.

It has been determined that transmission of information through the MSRTS does not conflict with the content or intent of the Rights of Privacy Act. It is, however, important that these records be processed, transmitted, and filed in such a manner that no unauthorized person can obtain the information contained in the records.

C. U.S.O.E. POLICY BRIEFS, QUESTIONS AND ANSWERS

> Question: What would constitute minimum information required on an identification and recruitment form to establish child eligibility under the Title I Migrant education program?
>
> Response: If a form for recruitment and enumeration purposes is to contain sufficient information to establish the migratory status of a child and not merely what a school official believes that status to be, then the form should contain the following information: (1) When (latest date) and between what places of residence did the parent (or guardian) move in search of temporary or seasonal employment in agriculture or fishing?...The form should also include something abut the nature of their employment so that it can be readily identified as being agriculture or fishing. In the case of formerly migratory children, it is important that the date the parents ceased to migrate be established. ...If the occupational status of the child's guardian...is going to be the basis for his being considered a migratory child...indicate the basis for considering that individual as the child's guardian. ...(2)

When (latest date) and between what places of residence did the child move.... (3) In the case of formerly migratory children, what was the date the child ceased to migrate...and is that child residing in a school district in which Title I migrant services are being provided to some currently or formerly migratory children...(and) a request for parental consent for participation of a child in the program as a former migrant. ...Just ahead of the signature line for the school official certifying eligibility, a statement should appear which makes explicit what is being certified...to make clear that the certification of the school official relates to the source of the information...rather than to the student's eligibility per se. ...eligibility is determined objectively from the facts of the particular student's situation and not be a certification which is in the nature of an assurance of a child's eligibility rather than a certification about the facts on which the child's eligibilty is based. (July 31, 1977)

Question: Are all migratory children (of school age) of all types of migratory workers eligible for services under the Title I migrant program?

Response: The children of migrant laborers who are not engaged in agriculture, fishing, or related food processing activities are not eligible for services under the Title I, ESEA, migrant legislation. Inclusion...of children in other categories of migrant or mobile populations would require an amendment to the statute. (July 21, 1977)

Question: Can supporting services be provided to migrant children with Title I migrant funds even though the migrant child is participating only in the regular school program because he/she does not require the supplementary instructional services of the Title I migrant program?

Response: ...funds...may be used to provide supporting services for migratory children, but only to the extent necessary to enable them to participate effectively in instructional services designed to bring about improvements in their educational performances. These instructional services, however, do not necessarily have to be supported with funds provided under Section 122 and may include the services of State and locally funded classroom teachers. (March 24, 1977)

Question: Are the migratory children of illegal aliens qualifying otherwise as migratory agricultural workers or migratory fisherman eligible for services under the Title I migrant program?

Response: ...educational services under the ESEA, Title I migrant program are to be provided all children who meet the statutory eligibility criteria regardless of their condition of alienage. (November 1, 1976)

Question: Are migratory children traveling with and under the complete supervision of crew leaders eligible for Title I migrant program services on that basis with the crew leader, in the absence of the parent, serving as the child's guardian?

Response: A person such as a crew leader or camp director having temporary custody of a child for the limited purpose of supervising his employment cannot be considered a legal guardian or a person having full parental responsibility. (October 7, 1976)

Question: Are the children of migratory agricultural workers or migratory fishermen eligible for Title I migrant program services if they themselves are not actually migratory as the parents are?

Response: ...children...who remain at home while the parents migrate... do not qualify for migrant services since they do not meet the "migration" requirements. However, if the children have been migrating annually with their parents and now have ceased to migrate, these children may be classified as "formerly migratory"... (October 3, 1975)

Question: Can a child who has never been identifed for Title I migrant program purposes as a currently migratory child participate now in the program as a formerly migratory child, if meeting that definition?

Response: If the child in question has been a migratory child of a migratory agricultural worker or migratory fisherman, even though the child may not have attended school because he or she was too young or for other reasons, then that child may be considered eligible to participate in a Title I migrant program provided that his parents...have indicated their concurrence that the child be "deemed to continue to be such a child..."

Question: Can the one-time signature of a parent suffice for the program participation of a formerly migratory child for the entire period of settled-out eligibility?

Response: ...the concurrence of the parent does not extend automatically to the child for a five year period. The enrollment form, therefore, should be signed on an annual basis to assure that the children so identified have permission to participate in the program. Further, the same certification by the parent or guardian may also be used as the parents' acknowledgement of their rights...concerning...privacy of parents and students. (May 10, 1977)

Question: When, in effect, does the five-year settled-out period commence, as of the date of initial identification as a migratory child or a year from that date?

Response: ...a child identified as an active interstate/intrastate migratory child is considered to be in that active eligibility status for the remainder of that year in which he was so identified. Therefore...he is entitled to a five year eligibility as a five year provision or former migrant child as of the termination of that active status year. (June 2, 1976)

Question: Do students entered into the Migrant Student Record Transfer System generate funds under the Title I migrant education program even though they might not be currently in attendance at a project school?

Response: ...pupils enrolled in the Migrant Student Record Transfer System generate program funds, whether or not such children are in attendance at one of your schools. Migrant children aged 5-17 enrolled in the MSRTS...continue to generate funds for (the state) for up to 13 months or until they are enrolled by another State. ...when children who have been enrolled in MSRTS do not attend such programs as may be available to them...appropriate information to this effect is entered into their MSRTS records. Entering such non-attendance or withdrawal information into the MSRTS does not affect the generation of funds, but merely serves to keep each student's cumulative academic record as comprehensive and complete as the System allows. (April 13, 1977)

Question: For purposes of Federal oversight, does the Migrant Student Record Tranfer System, as operated by the States, constitute a Federal system of records?

Response: ...the Migrant Student Record Transfer System...does not constitute a system of records under the Privacy Act of 1974. (October 13, 1976)

Question: Can the U.S. Office of Education grant permission for the use of MSRTS records or information or release such information to individuals or groups?

Response: ...the Office of Education cannot grant permission for the use of the System (MSRTS) to any one or group of individuals within any State. This is a determination that must be made by the State educational agency and the local educational institutions based upon their established policies for the use of the data and the safeguards on privacy issues. (July 23, 1976)

Question: If a child and his family settle out of the migrant stream, how long can the child be served in a migrant project?

Question: Does the five-year period of eligibility begin on the date of the family's last qualifying move into a school district or does it (the 5-year period of eligibility) begin when the child ceases to be a "currently migrant child?"

Question: If the 5-years of eligibility begin when the child ceases to be a "currently migratory child," does the period during which the child may be served in a migrant education project actually extend for a period of 6 years from the date of the family's last qualifying move?

Question: If a child's eligibility status changes from "currently migratory" to "formerly migratory" in the middle of a project or school term, is it necessary to secure parental consent for continued service in the project in which the child is enrolled?

Question: If the period of eligibility of a formerly migratory child expires in the middle of a project or school term, is it necessary to withdraw the child from the project prior to the end of the project?

Response: Public Law 93-380, Section 122(a)(1)(3), states in part:

For purposes of this section, with the concurrence of his parents, a migratory child of a migratory agricultural worker or of a migratory fisherman shall be deemed to continue to be such a child for a period, not in excess of five years, during which he resides in the area served by the agency carrying on a program or project under this subsection.

A child identifed as an active interstate/intrastate migratory child is considered to be in that active eligibility status for the remainder of that year in which he was so identified. Therefore, as stated in the above section of the law, he is entitled to a five-year eligibility as a five year provision or formerly migratory child as of the termination of that active status year.

Therefore, as an example, a child whose last qualifying move took place on January 1, 1977, would remain in active status as a currently migratory child through and including December 31, 1977. On January 1, 1978, the child would change status to a formerly migratory child (provided that the concurrence of the parent was secured) and would be eligible for project services up to December 31, 1982. As required by statute, the parents must provide their concurrence for program services. Therefore, parental concurrence and permission for program participation must be secured for all such children whether their attainment of such status occurs prior to or during the conduct of a project. The period of eligibility for services does in fact, then, extend for six years, including one year of active status and five years of settled-out status. Further, if a formerly migratory chlid has been enrolled in a project that commences prior to January 1, 1982, that child may continue to participate in those specific project services until they are completed.

At the termination of that specific project, the child may not be re-enrolled again, however, unless another qualifying move occurs to establish the child as currently migratory. (November 10, 1977)

Question: Are only school officers authorized to validate the eligibility of children on the authorization form? Could another individual, contractually serving as an agent of the State education agency (SEA) serve in this capacity?

Response: The SEA (may)...officially assign the census taker (or another individual) the responsibility and authority for signing, validating, and enrolling eligible migrant children in the Migrant Student Record Transfer System (MSRTS).

It is important, for the record, that you keep official documentation of the census taker assignment and agreement between the SEA and subgrantee as to the functions of the assignment and the ultimate responsible authority. This action should be sufficient to validate eligibility and not require the school official's signature on the authorization form.

Please note that the absence of the school official's signature pertains only to the authorization form and does not relieve the local school officials from their statutory obligation to provide educational programs for all children within their respective attendance areas. (November 9, 1977)

Question: What is the policy with respect to required eligibility information and parental signatures for the participation of currently migratory children?

Response: Section 116d.12 of the Title I Migrant Education Program Regulations requires the State educational agency (SEA) or designated operating agency to establish "...documentary evidence sufficient to demonstrate that the child is a currently or formerly migratory child..." The "documentary evidence" (usually an eligibility/enrollment record) must include adequate information to establish the child's eligibility, but does not necessarily require a parental signature (in the case of a currently migratory child). If, however, the parent or guardian is not present to provide the required information, your agency is still responsible for establishing the migratory status of both the child and the parent or guardian. Therefore, we advise that an authorized school official sign the record to attest to the source and credibility of the information.

The SEA is not prohibited, however, from requiring a parental signature for other purposes such as compliance with State privacy of information guidelines or health treatment and services regulations. (August 30, 1978)

Question: What is the policy with respect to admitting eligible migratory children, at mid-project, to "regular" Title I programs?

Response: There is no specific policy concerning mid-term enrollments of migratory children in local Title I programs. Our policy is that children who meet the LEA's criteria for the selection of Title I participants must be applied without regard to whether the child is or is not a migrant. LEA's that admit non-migrant children at mid-term to regular Title I programs should do the same for qualified migrant children. (September 6, 1978)

Question: What types of MSRTS-related documents should be retained for audit purposes?

Response: The only such documents that the SEA would be required to retain for purposes of assuring an auditor that program funds were expended on eligible migratory children would be the student enrollment forms. These forms must include (1) information sufficient to establish the child as an eligible migratory child, (2) the signature of an authorized school official attesting to the source and reliability of the information, and (3) in case of a formerly migratory child, the signature of the parent indicating permission for the child to participate in the program.

...SEAs are advised to retain other pertinent MSRTS documents, both for State management purposes, and to satisfy an audit or review of the administration and management of the program. These documents would include any intermediate forms that are used between the time of completion of the enrollment forms and transmittal of the information to the MSRTS, any other forms that are used to relay update information to the terminal operator and from the terminal operator to the MSRTS, the resulting MSRTS records themselves, and any formalized procedural instructions that are provided to project personnel or terminal operators with respect to their use of the System. (July 14, 1978)

Question: Does a child have to be enrolled in the MSRTS as a condition of eligibility for Title I migrant education program services? What happens if a parent refuses to permit the transfer of a child's record?

Response: ...it is not required by either statute or regulation that a child be enrolled in the MSRTS in order to be eligible for services through the Title I migrant education program. The child's eligiblity is based on information from the enrollment document that the SEA or the operating agency is required to establish.

...in accordance with the Family Educational Rights and Privacy Act of 1974 (Section 438 of the General Education Provisions Act), educational agencies have the authority to establish and maintain educational records

of enrolled students, and to release these records to "...other school officials...who have been determined...to have legitimate educational interests...(and to)...officials of other schools and school systems in which the student seeks or intends to enroll...," and are not required to secure the written consent of the parent. However, the rights that are accorded parents are that they "...be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record..." (emphasis supplied). Therefore, educational agencies have the authority to transfer, without the written consent of the parents, the records of any of their students who intend to enroll in another school. (July 18, 1978)

PART IV

Program Development

and

Project Identification

A. U.S.O.E Final Regulations, November 13, 1978

B. Operation Guidelines

C. U.S.O.E. Policy Briefs

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116d.5 - Designation of operating agencies

An SEA shall identify in its application the agency or agencies that it has designated to operate the State program. If all or part of a State program is to be operated directly by the SEA, the State shall identify in its application its personnel and other resources, including any resources that will be made available to it by contract or other arrangement, that will be employed to conduct the State program. If all or part of a State program is to be operated through one or more LEAs as subgrantees or through one or more special arrangements with public or nonprofit private agencies, the SEA shall identify them in its application.

(20 U.S.C. 241c-2; 1232c(b))

116d.6 - Participation of operating agencies

(a) If all or part of a State program is to be conducted through one or more operating agencies, the SEA shall require each of them to submit to it an application that includes:

(1) A description of the project to be carried out by the operating agency;

(2) An explanation of the relationship between the project and the State program;

(3) The objectives to be achieved for each grade group;

(4) The estimated number of eligible migratory children living in the area to be served by the project, and the estimated number of these children who will be served. If the operating agency proposes to provide migrant education program services, other than identification and recruitment of children and the transfer of records, to fewer eligible school-aged migratory children than the number of these eligible children living in the area, it shall explain why;

(5) A description of each service to be provided and its estimated cost;

(6) The types and number of staff to be employed;

(7) A description of how the operating agency will actively solicit parental involvement in the planning, operation, and evaluation of its project; and

(8) A description of how the operating agency assures that eligible migratory children will benefit fully from the

Page 32 is a blank page

project's services even if they do not speak English or have limited English language skills.

(b) The SEA shall review the applications of operating agencies and approve only those that comply with these regulations and conform to the State program approved by the Commissioner. The SEA shall send a copy of any approved applications (including any amendments) that are requested by the Commissioner, within ten days of the request.

116d.24 Special arrangements with the State educational agency

An SEA may make a special arrangement with a public nonprofit private agency or agencies to carry out a project if the SEA determines that:

(a) An LEA is unable or unwilling to conduct a project as defined in S116d.2,

(b) The arrangement would result in more efficient and economic administration of the State program; or

(c) The arrangement would add substantially to the welfare or educational attainment of the migratory children who are eligible to be served.

(20 U.S.C. 241c-2)

116d.33 Programs of instruction for preschool migratory children

Instructional services designed to meet the special educational needs of preschool migratory children - as distinguished from day care or other supporting services under S116d.38 - are:

(a) Limited to children who are under the age at which public elementary education is provided under State law;

(b) Comprised primarily of activities designed to increase the children's readiness for instruction in the basic academic skills, and not primarily designed for custodial purposes; and

(c) Conducted by or under the direct supervision of a person who is qualified under State law to conduct the activities referred to in subsection (b).

(20 U.S.C. 241c-2)

116d.32 Contents of application

In order for the state agency to comply with the section, the project proposal of the subgrantee (LEA) will include in each project proposal:

(a) A list of the areas within the area where eligible currently migratory children are expected to live and eligible formerly estimated dates on which the currently migratory children will arrive in and depart from these areas;

(b) Estimates of the number of eligible currently and formerly migratory children, by category, expected to live, or living, in the area. The LEA shall support these estimates by explaining how it arrived at them and by describing its efforts to identify and recruit all eligible currently and formerly migratory children;

(c) The number of eligible currently and formerly migratory children, by category, expected to be served. If the LEA expects to provide migrant education program services - other than the identification and recruitment of children and the transfer of records - to fewer eligible school-aged migratory children than the numbers estimated in the preceding paragraph, it shall explain why;

(d) A summary of the information - including information from other LEAs and from the migrant student record transfer system - that the LEA has regarding the special educational needs of the migratory children expected to live or living in the area during the period covered by the application. This summary must demonstrate that the LEA has obtained an accurate assessment of the cultural and linguistic backgrounds of these children and must include a description of the measures that the LEA will take to assure that a migratory child is not prevented from benefiting fully from the services provided by the Title I migrant eduation program because he or she does not speak English or has limited English language skills;

(e) A detailed statement of the objectives, including performance criteria, of the area project, and how these objectives will be achieved. This statement must include:

(1) A description of each service to be provided and the estimated number of children by age and anticipated grade placement - including eligible children that are or will be enrolled in private schools - expected to receive each service;

(2) A description of any inservice training required, including the types of training, the types and number of staff members who will participate, and the frequency of their participation; and

(3) An estimate of the types and number of staff to be employed, as well as the facilities and materials to be used.

(f) A statement of how the effectiveness of the area project will be evaluated as required by S116.43;

(g) An explanation of how the LEA will assure the involvement of parents and other appropriate representatives of migratory children in conducting the area program, as required by S116d.37;

(h) An explanation of the steps the LEA will take to assure the most continuity practicable in the education of the migratory children to be served, such as the exchange of course credits, both within and among States, and the intrastate and interstate sharing of program planning, evaluation, curriculum, and staff training materials;

(i) A decription of the functions and staff salaries that the LEA proposes to charge to administrative funds under S116d.10(a)); ...[and]...

(k) An assurance that the LEA will transfer the educational records of the migratory children participating in the State program in accordance with the Family Educational Rights and Privacy Act of 1974 and Part 99 of this chapter (Privacy Rights of Parents and Students).

S116d.35 Services to formerly migratory children

A formerly migratory child may participate in a project that includes currently migratory children or may participate in a project developed solely for formerly migratory children, provided that the particiation of formerly migatory children in the State program will not prevent the participation of currently migratory children or dilute the effectiveness of the State program for currently migratory children.

S116d.37 Comparable access to State and Locally funded educational facilities and services

(a) Assurances by the SEA. Each SEA that applies for a grant shall include in its application an assurance that it will not conduct the State program through an LEA that does not provide migratory children with access to State and locally funded educational facilities and services comparable to those ordinarily provided to nonmigratory children living in the attendance area in which migratory children are being served. If, however, the project is conducted during a time of the year when the LEA is not providing State or locally funded educational facilities and services to nonmigratory children, the LEA is not required to provide them for the migratory children.

(b) Relation to other requirements. The provisions of paragraph (a) of this section do not modify the requirements of S116.40 of this chapter, relating to supplanting State and local funds and

services that the applicant is required by law to provide to all children or specifically to migratory children.

(c) Definition of comparable access. The requirements of paragraph (a) of this section are satisfied only if migratory children have access to all State and locally funded instructional, health, nutrition, transportation, and other services on the same basis as provided by the LEA to nonmigratory children residing in the attendance area where migratory children are being served.

116d.38 Supporting services

(a) General. An SEA or an operating agency may provide health, welfare, or other supporting services with Title I migrant education funds, but only if these services are necessary to enable eligible migratory children to participate effectively in instructional services.

(b) Day care services. Day care services for eligible migratory children may be provided only as a supporting service to eligible preschool and school-aged migratory children and only with the specific approval of the Commissioner. Each SEA desiring to use program funds for day care services shall include a request in its application, or in an amendment to that application, and shall provide adequate information to allow the Commissioner to determine that the proposed day care services are:

(1) Not available from any other source;

(2) Necessary to enable eligible migratory children to receive instructional services supported by Title I; and

(3) Not extravagant in relation to the cost, the number of children who would receive day care, and the effect that the availability of the day care services would have on the participation of eligible migratory children in instructional services supported by Title I funds.

116d.39 Criteria for the approval of State applications*

The Commissioner approves a State application only if it contains the information and assurances required by S116d.3 and complies with all applicable requirements of Parts 100, 100a, 100b, 100c, and 116 of this chapter. The Commissioner also determines that:

(a) Payments will be used to carry out the State program and to fund projects - including the acquisition of equipment and, where

*In order for the state agency to meet these requirements, the same provisions must and shall apply to sub-grantee (LEA) project proposals.

necessary, the construction of school facilities - that are designed to meet the special educational needs of eligible migratory children. These programs and projects must also be coordinated with similar programs and projects in other States, including the transfer of the school records of these migratory children;

(b) Projects to be funded are of sufficient size, scope, and quality to hold reasonable promise of making substantial progress toward meeting the special educational needs of the migratory children to be served, particularly any need for improvement in the basic academic subjects;

(c) Projects designed to meet the special educational needs of preschool migratory children will be provided only if, considering the amount of funds available, these projects will not detract from the operation of projects for school-aged migratory children; ...(d)...(e)...

(f) The SEA's plan for assuring continuity in the education of migratory children includes appropriate procedures for coordinating its State program with programs in other States and for utilizing fully the migrant student records transfer system, including the transfer of the most current academic and health information available for the children served; and

(g) The SEA has made every reasonable effort to identify and recruit all eligible currently and formerly migratory children.

B. OPERATION GUILDELINES

1. Comprehensive Needs Assessment

The project proposal must provide evidence that the grantee has conducted a needs assessment to determine the educational, social, health, and nutritional needs of the students to be served. The needs assessment should identify students' cultural or linguistic characteristics that may require special programs or services, to assure that those students have opportunities to learn and succeed equal to the other students.

When conducting the needs assessment, the school administrator must involve the staff members and the parents of the students to be served. In order to involve the parents in the needs assessment and future project services, the district should organize a Parent Advisory Council (PAC). At least 51 percent of the parents selected for membership on the PAC must be parents of the students who are to participate in the project. The most effective way to select these parents is to have a number of district-wide parent meetings and have the parents select the members to be appointed to the committee.

2. Preparation of Proposal for Subgrant

a. Objectives

A project proposal must state in measurable terms the goals selected to accommodate the needs identified in the needs assessment. Before establishing the project objectives, the identified needs should be prioritized; the objectives should be limited to two to four of the top priority needs. An extended list of goals tends to weaken the program and to make the evaluation process unmanageable.

Clearly stating a goal in measurable terms makes it possible to evaluate an activity and provide a sound basis for determining future program content and instructional methods. Measurements provide both teacher and participating student a means of evaluation and direct them both toward the most relevant activities.

The following procedure is helpful when writing goals: (1) identify who will be doing the learning, (2) identify the performance, specifying the kind of achievement that will be accepted as evidence that the learner has achieved the goals, (3) designate the length of time to be required for achievement of the goals, (4) describe activites, materials or eduational aids to be used during the learning, and (5) specify the performance level expected, to show that the learner has achieved the goal.

Care should be taken to distinguish between activities and goals and to limit the goals to those relevant to the most demanding needs of the students.

b. Activities

For each goal there must be a statement as to what activities will be conducted to achieve that goal. The statement should include a projection of the resources to be utilized in performing the activities; e.g., personnel, software, hardware, etc.

c. Evaluation

The project proposal must include an evaluation component. This will include information about the methods, techniques, and instruments to be used in the project evaluation process. It will also include a calendar of events indicating specific times of each event, place, and person responsible. Also included will be a description of the process for data analysis and projection, both during the project implementation and after the post-test activities. The evaluation scheme will provide for gathering baseline data at the beginning of the project. This baseline data must be compatible with the stated goals.

d. Project Proposal Review

All project proposals are reviewed by members of the Advisory Committee on Migrant Education and the staff members of the ODE and MESC. The following 12 items, although not all inclusive, are the basis of the project proposal reviews.

e. Criteria for Migrant Education Project Proposal Review

1. Student Enrollment: Does the estimated number of students to be served compare with the number of students enrolled in previous projects and/or the number of MSRTS entrees?

2. Needs Assessment: Is there evidence of the applicant having conducted a needs assessment involving parents, students, and program staff members?

3. Statement of Goals: Are the goals specific, limited; do they accommodate the needs identified by the needs assessment; are they measurable and realistic considering the time and resource limitations?

4. Activities: Are the projected activities designed to accommodate the stated goals; are provisions made for student recruitment, home-school liaison and staff inservice; are provisions made to attend the needs of the linguistic and cultural differences of the students?

5. Support Services: Are provisions made for medical, dental, and nutritional services?

6. Staffing: Is there evidence that the staff selection and assignments are compatible with the projected activities and the cultural and linguistic characteristics of the students?

7. Parent and Community Involvement: Is there evidence that the parents and community took an active part in planning the program, and that they will be involved in the implementation and evaluation of the proposed program?

8. Equipment and Materials: Are the materials and equipment requested needed to implement the projected activities, are the costs justified on the basis of student enrollment, expected outcomes, and other budget expenditures?

9. Per Student Costs: Are the costs compatible with the number of students enrolled, the services to be provided, and expected outcomes; are the per student costs comparable to the per student costs of similar project proposals?

10. Evaluation: Does the evaluation component contain a statement of criteria by which the attainment of the stated goals will be measured, a description of instruments to be used, an evaluation schedule, and a description of the evaluation procedures?

11. Affirmative Action: Does the proposal provide information as to what action is being taken to comply with Titles VI, IX, and all affirmative action requirements?

12. Size, Scope, and Quality: Is the project of sufficient size, scope, and quality to assure a complete and satisfactory program?

3. School Board Approval

The application must include assurance that the local educational agency school board has by resolution authorized the school administration to request funds and administer the program.

4. Size, Scope, and Quality Defined

The purpose of size, scope and quality requirements is to assure a comprehensive program which focuses on specified goals and accommodates a limited number of top priority identified needs. There should be a sufficient number of students to justify a complete educational program and a full complement of support services. Minimal programs providing limited services to a restricted number of students will be given a lower priority for funding than comprehensive programs reflecting a higher cost-benefit ratio.

5. Aides

Although there are areas in which the tutor and the aide responsibilities are similar, there are basic differences. Tutors are often part-time volunteers performing specific tasks assigned by a teacher or other staff members. Aides are considered to be paraprofessionals having training, or desirous of obtaining training, in the educational processes. They are generally permanent, full-time salaried persons involved in the ongoing instruction process supervised by a classroom teacher. Aides generally consider their employment as a vocation or as a stepping stone to teaching or other positions in the field of education. For Aide Qualifications refer to OAR 581-37-005.

The Oregon Title I Migrant programs provide a career ladder program for teacher aides. This program encourages and assists the teacher aide to participate in credit granting course work through community colleges, institutions of higher education, and the Division of Continuing Education. For more detail, call the Title I Regional Specialist or the State Coordinator.

6. District Project Director

In analyzing specific situations where Public Law 89-750 funds are requested for a principal, or other district Title I Migrant administrators, an underlying question must be answered--that is, whether that administrator is, in fact, free to accept employment of any kind at the times for which he (or she) claims he will be working on project duties. It must be demonstrated that the principal is contractually free of other resonsibilities when he will perform PL 89-750 duties.

If, for example, the principal worked during the summer to supervise PL 89-750 program activities, and was not under contract to the district at that time, then the added expenditure for his services can be paid for from PL 89-750 funds. However, if the administrator is on a full-time district contract for the period of time during which the Title I Migrant program is administered, he (or she) cannot receive additional funds from the Title I Migrant project.

7. Personnel Recruitment

In recruiting personnel for Title I Migrant programs, the same consideration must be given to state and federal affirmative action requirements as applies in recruiting personnel funded from general fund sources. In addition, consideration must be given to selecting staff members who are qualified to serve the Title I Migrant students' specific needs with respect to skills development and linguistic and cultural characteristics.

8. Salaries

The general policy of the Oregon Department of Education, with respect to establishng salary schedules, is that we cannot take the position of endeavoring to usurp the authority of the district school boards. It is accepted that for regular term programs the salaries projected for the migrant education staff members will reflect the salary schedules of the education service district or school district responsible for payment of that person's salary. In many districts the salary schedules for the aides are inadequate; and, in such instances, it is suggested that the migrant education project director explore, with the school administrator, the possibility of salary increases for the aides on the basis of years of experience or course work completed.

Before each summer school program, the Advisory Committee on Migrant Education establishes a recommended salary schedule for summer school program employes. Although adherence to this schedule is not mandatory, any deviation will be questioned by the committee and justification will be required.

During the summer programs, salaries are projected on a daily basis, a day's pay for a day's work. Consideration should be given to the legal requirements that there should be extra pay for those who work on holidays.

Title I Migrant staff members are entitled to the same fringe benefits as other employes on the same district or ESD payroll.

9. Nonpublic School Students

Title I regulations refer to providing services for nonpublic school students when planning Title I Migrant programs. In program planning, members of the nonpublic schools in the district or area should be involved. Although funds cannot be allocated to nonpublic schools, nor can project staff members be assigned to nonpublic schools, the students of these schools are eligible to participate in the Title I Migrant programs. If nonpublic school administrators request it, provision must be made for their students to participate in the program.

10. Comparability

To comply with the requirements for comparability, migratory children enrolled in Title I Migrant programs must have access to all state and local funded instructional, health, nutritional, and transportation services that are provided for the nonmigratory students enrolled.

11. Staff Release Time

Budgeting provisions should allow for substitutes for staff members who will be required to attend regional or statewide workshops. Staff would include teachers, aides, home-school consultants, Migrant Student Record Transfer System clerks, etc.

12. Staff Utilization

Any teacher aide, home-school consultant or any other person whose salary is paid from Title I Migrant funds will serve only those students who are eligible to participate in Title I Migrant programs and services. If an employe is employed part time by Title I Migrant and part time by the general fund or Title I program, there shall be on file a schedule of activities and a roster of names of students the employe serves each day.

C. U.S.O.E. POLICY BRIEFS, QUESTIONS AND ANSWERS

Question: Can a Title I staff member provide program services in a classroom with other than eligible children present?

Response: If services are provided in the regular classroom or in other settings in which the children other than those properly selected to participate in the project will be present, these services will be directed to the selected children and the effectiveness of the project will not be impaired by the presence of children other than those selected to participate. (March 16, 1977)

Question: Does the pulling-out of Title I students from the regular classroom activity constitute supplanting since the students miss the regular class activity?

Resonse: The timing of Title I pull-out programs should be based on educational considerations as well as the practical contraints on the local school system. Indeed, it would be better to suggest that a local educational agency consider first the possibility of such a pull-out program being conducted at other times than when related activities are being conducted in the regular classroom. In any event, the Title I teachers and the regular classroom teacher should have a definite working relationship concerning identified Title I children. ...The applicant agency must provide sufficient information showing that such coordination will take place. (March 16, 1975)

Question: Does the Office of Education require the securing of signed permission for the use of photographs concerning the Title I migrant program?

Response: ...it is Office of Education policy to secure a signed release for every readily identifiable individual in a photograph prior to publication. For photographs provided to this office by a State agency, it is the responsibility of the agency to maintain the signed release. It is

suggested, however, that you transmit a copy of the release with all photographs submitted to this office. (March 30, 1977)

Question: When may Title I migrant program funds be used to fund preschool services? Daycare services?

Response: ...Title I migrant funds may be used to provide educational services for preschool children as long as these services do not detract from programs and projects for children aged 5-17. Daycare may be provided with migrant funds only as a support service for preschool and older children and only upon specific approval by the U.S. Commissioner of Education. (June 27, 1977)

Question: Can equipment purchased with Title I migrant funds be used by other than migrant students or in other than exclusively migrant classrooms?

Response: ...if the Title I migrant-purchased equipment is widely used for non-Title I purposes, it either was not needed or should have been purchased with State and local funds. Such non-Title I use could be a violation of Section 116d.11(a) of the Title I Migrant Regulations which prohibits "imprudent, wasteful, or extravagant expenditures." The use of Title I funds to purchase resources for the general support of a school or school system would require an amendment to the statute. ...services involving the use of Title I migrant-purchased resources are planned, conducted, and directed for the benefit of children selected to participate in the project. (August 8, 1977)

Question: What occurs when buildings financed with Title I funds are no longer actively needed for project purposes?

Response: ...if buildings acquired through Federal funds are no longer being used for Title I purposes, activities sponsored by other Federal awards, or activities which have purposes consistent with Title I, then the recipient school district must return control of the building and lands to the Commissioner. (July 23, 1977)

Question: Who maintains title to equipment purchased with Title I migrant program funds for use by an operating agency? What occurs after the equipment is no longer actively needed by the operating agency?

Response: The (State) Department of Education is the grantee, and therefore, the "grant recipient" of Title I migrant funds. It should retain title to all equipment...since it is accountable to the Federal Government for that property even though it is used by local school districts. ...If the property cannot be used for project purposes...then the recipient must either pay the Federal Government the fair market value of the property or dispose of the property in accordance with the Federal Regulations... (June 29, 1977)

Question: Can Title I migrant program funds be used to purchase portable units for use as classroom facilities for eligible students?

Response: ...migrant program funds can be used for the purchase of portable units only when there are no other existing facilities (rental, etc.) and only when necessary to implement projects specifically designed to meet the highest priority needs of migrant children. ...the State must also reserve the option for moving these units to areas where shifts in the migrant population may determine the greatest need. (April 8, 1977)

Question: What occurs when there is no longer an active need for program-purchased property and equipment?

Response: When there is no longer a need for such property to accomplish the purposes of the project, the recipient shall use the property in connection with other Federal awards it has received in the following order of priority: (1) Other awards under Federal programs administered by the Commissioner needing the property; (2) Awards of other Federal agencies needing the property. ...only your agency and not any local educational agency may utilize the equipment under the foregoing regulations. (May 3, 1976)

Question: If Title I purchased buses or other vehicles are no longer needed for the current Title I program, may the local educational agency use the buses for other purposes?

Response: ...the school district has an obligation to utilize the buses acquired with Title I funds for Title I purposes but only the number of such buses required for the current Title I program. All other buses should be sold or removed from the Title I inventory by payment of their fair market value to the Federal Government... (December 8, 1975)

Question: In order to avoid the issue of "general aid," must the program "pull-out" migrant children from the regular classroom for provision of special services?

Response: ...there is no provision in the Migrant Program Regulations that would definitively require migrant children to be pulled out of the regular classroom for the provision of special instructional services. The manner in which supplementary services are to be provided is a decision to be made by the State education agency (SEA), as the direct administrator of the Title I migrant education program. That decision would be based on SEA and operating agency instructional program policy. It is not the intent of the Migrant Program Interim Final Regulations nor the authorizing statute (Section 122 of Title I, Elementary and Secondary Education Act of 1965, as amended) to unduly limit the options of educational agencies with respect to the timing and the approaches to be taken in the development of special Title I migrant instructional activities.

When special services funded through the Title I migrant education program are provided in the regular classroom, however, special precaution must be taken to assure that such services are not diluted by the

presence of non-migrant children. Title I migrant education services must be planned, conducted, and directed for the benefit of children selected to participate in the project. When non-project children happen to be present in the same classroom when supplementary services are being provided to Title I migrant participants, any benefits they may derive from such services would be incidental.

...decisions concerning the manner of provision of special instructional services are at the discretion of the SEA, as the grantee of Title I migrant eduation funds and as the direct administrator of the program. (January 20, 1978)

Question: How long must the documentary evidence be retained in the SEA or LEA files?

Response: In accordance with Section 434(a)(2) of the General Education Provisions Act, as amended by Section 501 of PL 93-380 (Education Amendments of 1974), pertinent books, documents, papers, and records shall be available" ...until the expiration of five years after the completion of the project or undertaking..." Therefore, as an example, records relating to a FY 1977 program or project ending on September 30, 1977, shall be retained through and including September 30, 1982. Further, Section 100b.477(d) of the General Provisions for Programs states that "...records involved in any claim or expenditure which has been questioned by Federal audit shall be further retained until resolution of any such audit question." (November 10, 1977)

Question: What local project document(s) other than fiscal records, must be maintained for audit purposes by the LEAs?

Response: The local educational agency, as a subgrantee of Title I migrant funds, is also required to retain program and fiscal documents and records. Specifically, these documents would include:

(a) Project Applications;
(b) Contracts;
(c) Evaluation, Performance, and Financial Status Reports required by the SEA;
(d) Complaints and disposition action; and
(e) All fiscal records and documents.

In accordance with Section 100b.477(e)(2) of the General Provisions for Programs, "In the case of a subgrant (or negotiated contract exceeding $2,500) the State agency, the Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the subgrantee (or the contractor) which (are determined to be) pertinent to the specific grant, for the purpose of making audit, examination excerpts, and transcripts." (November 10, 1977)

Question: What State program document(s), other than fiscal records, are required to be maintained for audit purposes by the SEA?

Response: The State educational agency, as the responsible and administering agency under all Title I programs, and as the "recipient" of Federal funds under the Title I migrant programs, is required to maintain all program and fiscal documents and records. Specifically, these documents would include:

1. Annual State Progam Plan and Application for Grant (OE 362, OMB No. 51-R1056) including:
   (a) Standard Form 424 (OE 362, OMB No. 29-R0218) (cover page);
   (b) Project Approval Information (HEW 608T, OMB No. 29-R0218);
   (c) Budget Information (HEW 608T)
   (d) Program Narrative (HEW 608T)
   (e) Assurances Page (HEW 608T) and standard assurances--
       HEW 441 (Title VI, Civil Rights)
       HEW 596 (Protection of Human Subjects Certification)
       HEW 639 (Title IX, Education Amendments of 1972);
2. State Program Plan Amendments and Budget Revisions;
3. Notification of Grant Award (OE 583-2);
4. State Performance Reports (OE 362-1, OMB No. 51-R1089);
5. State Financial Status Reports (OE 362-1, OMB No. 80-R0180);
6. Annual State Evaluation Report;
7. Project Applications (local project applications and subgrant agreements);
8. Contracts;
9. Property Inventories;
10. Evaluation, Performance, and Financial Status Reports Required of LEAs by SEA;
11. Monitoring Reports and Follow-up activity;
12. Complaints and disposition action;
13. All fiscal records and documents (primary obligatory documents or copies) as required by Section 100b.477(a) of the General Provisions for Programs which states, in part, "...all records relating to the receipt of expenditures of Federal funds (and to the expenditure of the recipient's contribution to the cost of the project, if any) ...including all accounting records and related original and supporting documents that substantiate direct and indirect costs charged to the award." (November 10, 1977)

Question: What would be considered "incidental" presence of non-migrant children in a class being conducted by a Title I, ESEA, migrant funded staff member, and/or utilizing Title I, ESEA, migrant-purchased equipment and/or materials?

Response: This office is not in a position to state to you that 2, 4, or 26 non-migrant children in a class of 40 children constitutes "incidental." Such a determination must be left to the judgment of the SEA. However, if services are provided in the regular classroom or in other settings in which children other than those selected to participate in the project will be present, these services will be directed to the selected children, and the effectiveness of the project will not be impaired by the presence of children other than those selected to participate. (January 5, 1978)

Question: Are local migrant eduction projects required to use the same application form as that required of State educational agencies?

Response: Program Directive M302-5, dated April 15, 1977, instructed State educational agencies that the application form to be used by local educational agencies is at the State's discretion. Such applications, however, must provide, at a minimum, that information indicated by the instructions for Part III (Budget Information) and Part IV (Program Narrative). (August 25, 1977)

Question: Are there any restrictions on the provision of preschool services through the Title I migrant education program?

Response: (It is clearly indicated) that programs and projects for preschool children are subordinate to those for school-aged children. (Each SEA) is required to make an annual determination that the provisions it is making for preschool programs for migratory children are not detracting from the operation of programs and projects for school-aged migratory children. (June 9, 1978)

PART V

Support Services

A. U.S.O.E. Final Regulations, November 13, 1978

(Refer to Part III, Program Development and Project Proposals)

B. Operation Guidelines

B. OPERATION GUIDELINES

1. Day Care Programs

The 1975 federal regulations have definitely restricted the funding of day care programs by mandating the following requirements:

a. Assurance that all students who are to attend the day care programs have older brothers or sisters enrolled in the district Title I Migrant K-12 education programs.

b. Assurance that all eligible school-age migrant students in the state needing Title I Migrant special educational and support services are obtaining those services.

c. Approval of specific application to the Commissioner of the U.S. Office of Education with sufficient information to confirm that such services are:

(1) Not available from other public or private agencies.

(2) Essential to enable K-12 migratory children to participate in the education program.

(3) Not extravagant on the basis of students served and services provided.

(4) Not utilizing funds needed to provide services for school-age migratory children.

2. Home-School Consultants

a. Role of the Home-School Consultant

A very important component of the migrant education projects is the development of open communications between the school and the migrant families. The home-school consultant plays a primary role in developing this level of communication. It is recommended that all projects have available the services of a well trained home-school consultant, either on a full-time or part-time basis.

Following is a statement of the recommended duties and responsibilities of a home-school consultant. The services provided by the Title I Migrant home-school consultant does not exempt the school from its responsibility of providing the migrant students general counseling services equal to those provided other students in the district.

b. Duties and Responsibilities of the Home-School Consultant

The home-school consultant's role is not only to represent the school to the target group students and parents but, even more importantly, to represent the student and his/her parents to the school. For this reason it is necessary that the consultant be given considerable freedom to function as he/she feels will best serve the needs and interests of the students.

51

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He/she must be given the freedom to operate as a free agent with whom the target group can confide, and must be allowed to treat as privileged information those things related to him/her by the target group students and their parents. He/she must have the integrity and judgment to exercise this freedom and these privileges in a manner that will not jeopardize the administration of the school.

The consultant must have a knowledge and understanding of the experiences, working and living conditions, language, and culture of the migrant society. A determined effort should be made to recruit qualified consultants who have experienced the life of the migratory farm worker.

c. General Assignments

The home-school consultant will:

(1) Establish lines of positive communication with growers, camp owners and managers, and all people who can provide information concerning the temporary or permanent residence of the target group families.

(2) Become knowledgeable of the school's philosophy, curriculum, activities and support services, and assist the district staff in determining to what extent these should be modified to meet the needs of the target group students.

(3) Determine what agencies, service organizations, businesses and industries in the community can provide supportive services that will assist the school in meeting the needs of the target group students. He/she will open lines of communication within the triad of school, community, and target group.

(4) Plan and implement inservice programs involving school staff members, assisting them in recognizing and understanding the collective and individual needs of the target group students, and in developing programs and services necessary to accommodate those needs.

(5) Counsel with students and parents to identify and recommend to the school personnel solutions for the educational needs of the target group.

d. Specific Assignments

The home-school consultant will:

(1) Through persuasion rather than implied compulsion, recruit school-age migrant children for enrollment.

(2) Work with students and parents to encourage regular attendance and discourage truancy.

(3) Upon obtaining permission, recruit in migrant labor camps.

(4) Work with school personnel to make the student's first exposure to the school a positive, nonthreatening experience.

(5) Keep school administrators and transportation personnel advised of needed additional transportation services for the migrant students.

(6) Advise school administrators of projected crop conditions, labor demands and number of migrant families anticipated by growers, contractors and camp managers for the current year.

(7) Provide the school administrators the names of the migrant children who should be provided free hot lunches.

(8) Through a cooperative effort of school and community resources, assure that the target group students have adequate clothing.

(9) Serve as interpreter at parent-teacher conferences when qualified instructional aides or other personnel are not available.

(10) In the absence of other designated personnel, and after receiving proper authorization, attend such emergencies as taking students to the doctor, dentist, home, etc.

(11) Encourage target group parents to visit school and participate in school-sponsored activities.

(12) Obtain information necessary to complete student personnel record form.

(13) Encourage and assist the school staff members in planning social activities that will involve members of the target group.

(14) Keep a log of daily activities.

(15) Train aides to assist in school-home liaison.

(16) Keep well informed of all services available to the target group such as daycare, preschool, adult education, vocational training, health, welfare, etc.

(17) Develop a working knowledge of school law.

3. Nutritional Services

In order to provide the required nutritional service with the least expenditure of project funds, provision should be made for maximum utilization of the Oregon Department of Education's School Nutritional Services and Commodity Distribution reimbursement funds and available commodities. Also, for summer term programs both commodities and cash reimbursement can be obtained from the Child Nutritional Program, Western Region, U.S. Department of Agriculture, 630 Sansom Street, Room 734, San Francisco, California 94111. Initial contact with that office should be made at least six weeks prior to beginning of your summer school program.

4. Health Services

The general health of the students to a large degree dictates how well they will respond to educational programs. Health service should be of high priority and an integral part of any migrant education program.

In planning the program, the staff should identify and communicate with all agencies, institutions or service organizations that could assist in providing health services for the students.

Some sources of service that have been very cooperative in different areas are:

State Board of Health
Oregon Dental School
County Health Services
Oregon Medical School
Local or County Dental Associations
Local or County Medical Associations
Individual Doctors and Dentists
Service Organizations

5. Clothing

Often the home-school counselor finds that migrant children do not attend school because they feel they do not have adequate clothing, or, if they do attend, they are so concerned about their appearance that they withdraw from participation in school activities.

Sources of obtaining clothing are:

Fraternal Organizations (especially the Elks Club)
Ministerial Associations
Service Clubs

6. Transportation

Public Law 89-750 regulations permit expenditures for transportation of migrant pupils under certain conditions. Ordinarily, the only transportation needed is for pupils to and from schools, museums, places of historical or scientific importance, or off-campus project activities. State agencies that receive PL 89-750 allocations have considerable discretion in determining what activities may be included in a project. However, all such activities need to be evaluated in terms of how they contribute to the project's objectives, and how they meet the basic project requirements.

Project funds shall not be used to provide transportation from home to school and return when such services are provided to the other students in the district from general funds. Generally, this regulations will not prohibit providing migrant students' transportation from home to school and return during summer term projects, as few, if any, schools have summer programs funded with general funds.

If the district has a year-round educational program or is conducting a district-funded summer school program, the project director should negotiate with the school administrator to assure that transporation is available to all migrant students; and that the district is making a commitment to the migrant students equal to the students in district-funded programs.

There is no restriction on the use of Title I-M funds to transport preschool students in districts in which there are no district-funded preschool programs.

PART VI

Parent Involvement

A. U.S.O.E. Final Regulations, November 13, 1978

B. Operation Guidelines

C. U.S.O.E. Policy Briefs, Questions and Answers

56

Page 56 is a blank page

PART VI

Parent Involvement

A. U.S.O.E. Final Regulations, November 13, 1978

B. Operation Guidelines

C. U.S.O.E. Policy Briefs, Questions and Answers

Page 56 is a blank page

A. U.S.O.E. FINAL REGULATIONS, NOVEMBER 13, 1978

116d.37 Parental Involvement

Each SEA shall take the necessary steps to assure effective parental involvement throughout the State program, such as the use of interstate or local parent councils. As a minimum, each SEA shall demonstrate in its application that:

(a) It will require all operating agencies to solicit actively parental involvement in the planning, operation, and evaluation of their projects....

B. OPERATION GUIDELINES

1. Planning Community Involvement

The State Coordinator of Migrant Education has developed a number of pamphlets, manuals and other materials to help project personnel plan, develop and implement community involvement programs and parent advisory councils. These materials, plus inservice programs and workshops for project staff, parent advisory council members or other members of the community, will be made available if requested from your regional representative or the state coordinator's office.

2. No Title I Migrant project will be awarded funds unless there is satisfactory evidence that the local educational agency or other sponsoring agency has developed and involved a community involvement component and has involved the parents of the eligible students in conducting the needs assessment and planning and project objectives and activities.

C. U.S.O.E. POLICY BRIEFS, QUESTIONS AND ANSWERS

Question: May a Title I Parent Advisory Council sponsor its own fund-raising activities? What should be the role of the State or local educational agency?

Response: ...there are no legal restrictions...(on fund-raising activities by members of Title I advisory councils). ...the parent council members would not be accountable to the local educational agency for any use they might make of the funds they would raise through their various activities. ...All that a local educational agency can ask of the parent advisory council members with respect to such activities is that they specify the purposes of those activities and not put the local educational agency in the position of having to defend its allocation of Title I funds for authorized activities on the part of the parent council. (July 13, 1977)

Page 58 is a blank page

PART VII

Fiscal Management

A. U.S.O.E. Final Regulations, November 13, 1978

B. Operation Guidelines

C. U.S.O.E. Policy Briefs

Page 60 is a blank page

A. U.S.O.E. FINAL REGULATIONS, NOVEMBER 13, 1978

116d.6

(a)...(b) Omitted

(c) Each operating agency shall maintain records of all financial transactions relating to the project for the period of time required by Section 434(a) of the General Education Provisions Act. Each operating agency shall also provide timely financial reports (including the financial status report prescribed by S100b.403 of this chapter) to the SEA.

(d) An operating agency may not obligate, within the meaning of S100b. 55(c) of this chapter, Title I migrant education funds before:

(1) The effective date of the SEA's approved application; or

(2) The date on which the operating agency's application is submitted to the SEA in substantially approvable form, whichever is later.

116d.9 Title and Control of Property

(a) Except as provided by paragraph (b) of this section, an SEA shall maintain title to and control over all property that is acquired with its Title I migrant education funds.

(b) If a State law requires that an agency of the State other than the SEA maintain title to, or administrative control over, property that is acquired with Title I migrant education funds, the SEA shall arrange for functions to be carried out by the appropriate State agency. That State agency shall then be responsible for the proper exercise of these functions. However, the SEA shall retain the right to use, move, or otherwise dispose of this property in a manner designed to carry out most effectively the State program.

B. OPERATION GUIDELINES

1. Over Expenditures

Over expenditure of any line item in any category in excess of ten percent will be subject to audit exception unless that overexpenditure can be offset by under expenditure in other line items and such a transfer of funds within the budget is approved by the authorized employe of the Oregon Department of Education. The ten percent limitation applies to the line item that has the smallest amount of funds originally allocated.

Page 62 is a blank page

2. Indirect and Administrative Costs

No funds may be budgeted for project administration. Administrative costs may be offset by requesting funds to cover indirect costs. In order to be eligible to include indirect costs in the budget, the applicant agency must file with the Oregon Department of Education Business Services Section completed forms projecting the indirect cost ratio for that agency. If the indirect cost ratio has been approved by the ODE, the agency may include in its budget an amount equal to the cost ratio times the amount of the direct costs projected in the budget. The forms needed to complete and report the indirect cost ratio may be obtained from the ODE Business Services Section.

3. Time Limitation of Budget Expenditures

After project proposals have been approved by the State Board of Education and the Oregon Department of Education has received from the U.S. Office of Education official Notification of Grant Award, official notification of allotments are forwarded to the funded agency. The Notification of Project Approval (Form 581-3140) indicates the effective date of fund allocation. Project funds obligated prior to the indicated effective date are not allowed and subject to audit exception. No funds may be obligated after the project activities have been completed; e.g., if the regular term project terminates June 2, no funds may be obligated after that date.

4. Carry-Over Funds

Title I Migrant regulations make no provisions for projects to retain funds that have not been obligated by the termination of the project. Funds not obligated will be returned with Form 581-3140 to the Oregon Department of Education within 90 days of termination of the project.

5. Copyrights and Patents

Federal regulations permit the obtaining of a copyright on materials, publications, or films, produced through a project funded under PL 89-750. However, the federal government shall be granted a nonexclusive, irrevocable, royalty free license on all such copyrighted materials for the purposes of reproduction or publication. Authority is also retained by the government to sublicense the reproduction or publication of such materials for governmental purposes.

Inventions developed through or as a result of PL 89-750 projects are to be made widely, promptly, and freely available to the government, science, industry, research workers, and the general public. In some cases, it may be advisable to permit the obtaining of a private patent covering the invention in order to make an adequate commercial development of a new invention widely available. Accordingly, an invention arising out of the activities assisted by PL 89-750 funds shall be promptly and fully reported and shall provide that the ownership and manner of disposition of all rights in and to such invention shall be subject to determination by the Assistant Secretary, Health and Scientific Affairs, of the U.S. Department of Health, Education, and Welfare.

6. Equipment

Equipment purchased with Title I Migrant funds must be used exclusively to support Title I-M project services. If this equipment is not being used in the project or if there is no longer a Title I-M project at the site at which the equipment is located, the state agency may place it in a project in which it can be utilized to serve Title I-M students. Within an area, the area director has the authority, and the responsibility, to transfer equipment within the area to assure the most effective utilization of that equipment.

There is a continuing federal interest in equipment acquired under PL 89-750 for the duration of the useful life of such equipment. If for any reason the equipment is sold before the end of its useful life, the inventory should reflect the name of the purchaser and the amount of the sale. The funds will be returned to the federal government through the Oregon Department of Education.

Where local educational agencies and participating schools carry insurance against theft, fire, and vandalism, items purchased under project funds normally will be included automatically under the terms of such insurance. If this is not so, suitable insurance costs are permitted under these acts. The grantee shall be held liable for any loss or destruction of uninsured equipment purchased with project funds.

Project directors will maintain inventories of equipment costing $100 or more for the useful life of such equipment. When inventoried project equipment is sold or rental income is received, proceeds should be credited to the federal government through the Oregon Department of Education, Business Services Section. If any equipment is in any way disposed of, a notation should be made on the inventory. The inventory must provide the following information: (1) date of purchase, (2) serial number, (3) cost of unit, (4) from whom purchased, (5) manufacturer's name, (6) current location, and (7) final disposition.

7. Construction

Expenditures for minimal construction are allowable under P.L. 89-750 after prior approval by USOE if it is established that such expenditures are essential to the success of a project or program providing services to migrant children.

Specific federal guidelines have not been established indicating the percentage of a project's budget which can be devoted to construction or remodeling. The Oregon Department of Education, therefore, will review all construction components in proposed projects to determine if they comply with state-imposed limitations, state building requirements, and the identified needs of the project objectives and activities. The Oregon Department of Education will not approve construction projects that would encourage and/or maintain the isolation of cultural or linguistic minorities.

Projects which include construction must be approved by the Oregon Department of Education by June 30 of the fiscal year in which the grants are made. Construction contracts may be let within a reasonable period of time following the date of approval, taking into consideration the nature of the program or project to be served by the construction and the magnitude of the construction to be undertaken. In any event, such contracts must be let no later than June 30 of the fiscal year in which the grant is approved. Obligations should be liquidated within a reasonable length of time following the letting of the construction contract.

C. U.S.O.E. POLICY BRIEFS, QUESTIONS AND ANSWERS

Question: Is it permissible to use migrant program funds to pay a portion of the migrant coordinator's salary and expenses which are directly related to the operation of the Title I migrant program?

Response: ...it is permissible to use migrant program funds to pay a portion of the Migrant Coordinator's salary and expenses which are directly related to the operational aspects of the program. (June 27, 1977)

Question: Are "learn and earn" programs which provide stipends allowable under the Title I migrant program?

Response: ..."learn and earn" program could be an authorized component of the...State Plan and paid for out of Migrant Program funds providing: a) that this program provides basically an instructional activity whether locally, Title I or migrant supported; b) that there be on-the-job training and supervision; and c) that the grantee must keep records for audit purposes. ...suggested that you check, however, with your own State authorities (labor and education) regarding State youth employment laws and also with the local office of the U.S. Department of Labor regarding Federal youth employment regulations. (April 29, 1977)

Question: How do the State educational agency and local educational agencies incur and document obligations under the Title I migrant program?

Response: Your agency and the participating local educational agencies are, in effect, being reimbursed by the Federal Government...While all obligations of funds under Section 122 must be documented in order to establish the cost of each project, rules concerning how obligations may be incurred and documented are established by each State educational agency. Such rules need not be different from commonly accepted practices in your State. (March 25, 1977)

Question: Are legal expenses incurred as part of the program allowable as expenditures under the Title I migrant program?

Response: The cost of legal expenses required in the administration of grant programs is allowable. (However) If you find that under your

agency's procedures, those fees were not within the scope of the approved application, then the fees would be unallowable. ...Expenditures of the grantee may be charged to this grant only if they: (1) are in payment of an obligation incurred during the grant period, and (2) conform to the approved project proposal. ...you may want to consider whether the controversy arose out of the personnel procedures that are generally applied to all the agency's employees or only to those involved in the Title I project. If the controversy could have arisen in connection with non-federally reimbursed activities and just happened to involve personnel connected with the Title I program then that would be another reason for questioning this expenditure. (March 15, 1977)

Question: Are the travel expenses of parent council members when in connection with Title I activities chargeable to Title I program funds?

Response: The actual costs of travel (food, lodging, and related expenses) by employees or parent council members in connection with a Title I activity that is within the scope of an approved project application may, of course, be charged to Title I funds. There are no provisions for additional payments on a per diem basis to either employees or parent council members. ...The essential features, including appropriate justifications, of any proposed training programs for employees or parent council members must be included in the annual Title I project application. (August 30, 1976)

Question: What types of school activity assignments can a Title I teacher perform within the scope of the Title I program?

Response: The agency must determine a) whether the activities in question are sufficiently related to the Title I project to be considered a justifiable part of the teacher's or aide's Title I assignment or b) the performance of those services will not diminish or otherwise detract from the services that the teachers or aides are expected to provide under the Title I project. (November 3, 1975)

Question: Who is considered to be the responsible agency accountable to the Federal Government when a misexpenditure of funds under the Title I migrant program is identified at the local educational agency level or operating agency level?

Response: The State educational agency is considered to be the responsible agency under all Title I programs and hence, is accountable to the Federal Government for any misexpenditure of funds. In the migrant program, the State educational agency is not only the administering agency, as it is for all Title I programs, but also the "recipient" of the Federal funds. Although a subcontract arrangement was entered into with the local educational agency based on the conditions established by the State educational agency, there can be no question but that the State educational agency is responsible for the return of funds based on any State migrant program exception. (August 12, 1976)

Question: Why is the Federal Government so concerned about large amounts of carryover if such carryover can be spent within the next year, as the law allows?

Response: ...this program is funded on an annual basis by the Congress, and money authorized for use in one year should be spent in that year. (May 20, 1976)

Question: Why must a State educational agency submit separate and distinct documentation of activities for carryover funds, apart from those identified as part of the new application?

Response: ...project activities funded with carryover funds should be a part of the program for the new school year...a distinction must be maintained between services to be provided with funds from the preceding fiscal year (carryover) and those provided with funds from the current fiscal year. ...must insure that the applicant's proposed activities to be carried out with one year's funds are not duplicated in the proposed activities to be carried out with funds from the other fiscal year. (February 25, 1976)

Question: Can some of the State educational agency activity of the Title I migrant program be charged to migrant program funds rather than Title I administrative funds?

Response: The use by an SEA of program funds for activities such as in-service training, on-site direction of local programs, and evaluation of local programs, should be clearly justified and the activities documented so that they can be distinguished from activities that should be financed with Title I administrative funds. The cost of any SEA activity that is clearly a part of or related to a specific program for migratory children to be conducted at one or more locations in the State may be charged to Title I program funds... (July 2, 1969)

Question: Can a State educational agency claim indirect costs under the Title I migrant program?

Response: ...State educational agencies apply to their respective Department of Health, Education, and Welfare Regional Office for approval of their plan for determining their indirect cost rate at the State level. Indirect rates for local educational agencies are established by the State Department of Education in accordance with a plan approved by the department. (June 9, 1977)

Question: How does a State educational agency claim indirect costs associated with the administration of the Title I migrant program? Are indirect costs to be paid from Title I administrative funds or migrant program funds?

Response: ...State educational agencies may incur indirect costs under any Federal program...on the basis of an indirect cost rate approved by the Department pursuant to applicable principles and procedures... Indirect costs for administrative functions performed by members of the migrant staff and paid for out of Title I administrative funds are paid from those funds on the basis of the rate approved for the State educational agency. (June 7, 1977)

Question: May the State educational agency (SEA) use program funds to purchase trailers for use as migrant education program facilities?

Response: ...migrant program funds can be used for the purpose of portable units only when necessary to implement projects specifically designed to meet the highest priority needs of migrant children...the State must also reserve the option for moving these units to areas where shifts in the migrant population may determine the greatest need...(you may want to investigate the availability of) trailers...through (the) Federal Surplus Personal Property Donation Programs... (November 23, 1977)

Question: Must either the new fiscal year application or a request to use carryover be submitted prior to obligation of funds after September 30 of any fiscal year?

Response: ...the grant award for your State educational agency's migrant education program (covers) a project period ending September 30...(when) that period has expired, a request including a description and budget of the use of those funds must be submitted and approved by this office; otherwise (fiscal year) funds cannot legally be obligated after September 30...The request for use of those funds should be incorporated with the request for (new fiscal year) funds. If your agency is not prepared...to submit a complete (new fiscal year) application, please tell us at least how your (prior fiscal year) funds will be used to provide services in (the new fiscal year period). (November 14, 1977)

Question: Can staff development activities (i.e., inservice training) be paid for with migrant education program funds?

Response: "...staff development activities...are...allowable...(provided that)...such training (is) directly related to...the services which such persons will perform during the same project year in connection with an approved program or project under Title I..." (March 9, 1978)

Question: Can Federal migrant education funds be set aside by State migrant education programs for use in payment of unemployment compensation? If such funds may be set aside, can funds from one fiscal year be used in following fiscal years (over the two year limit)?

Response: Federal funds provided under the Office of Education School Assistance Program may be used to make payments to a fund established for the purpose of making payments to individuals as unemployment compensation. The basis on which Title I migrant (education) or other Federal funds are set aside and paid into a fund for this purpose must be the same as for the payment of such funds from State and local revenue. Federal funds are not to be used to make direct payments to individuals upon their becoming unemployed. Since payments from funds currently available may be made only into a fund and not directly to individuals, there is no cause for concern about the period of availability. The Federal funds lose their identity with respect to program and fiscal year upon their being paid into the fund. (February 17, 1978)

Question: Were a court to find that a previous employee of a State migrant education program had not received complete compensation, may a State migrant education program reimburse that employee for prior service in prior fiscal years from present fiscal year's monies?

Response: The current year's funds may be used to provide additional compensation to employees of any specific Federal program upon an administrative or judicial finding that those employees were entitled to additional compensation for services provided in prior years. (February 17, 1978)

Question: What steps can be taken to assist in early grant notification to the SEA, and subsequently, a release of funds to local projects?

Response: Migrant education funds for the period beginning July of any year, like all Title I funds, will be available to State Educational agencies (SEAs) upon application to the U.S. Office of Education as of July 1.

In order for local school districts to have migrant education funds available at the earliest possible date, the State migrant education office should have its application submitted to the U.S. Office of Education by early June. This permits an early review; negotiation with the State educational agency, if required; and correction of errors or omissions that might prevent the State application from being accepted as substantially approvable.

When the SEA application is finally approved, the State grant award is prepared and dated as of the date on which the application in a substantially approvable form was postmarked at the site of mailing but in no case prior to July 1. Therefore, prompt funding and notification is facilitated by the State application being submitted to the U.S. Office of Education as early as possible, and preferably prior to July. (January 3, 1978)

Question: What kind of financial assistance does the Title I, ESEA, migrant education program provide for construction and/or renovation of facilities?

Response: Since migrant program funds are intended only to supplement the primary fiscal efforts of the State and local educational agencies, documentation regarding the unavailability of other funding sources, efforts to lease facilities or the consideration of portable facilities must be included to justify this activity. Documentation must be submitted to show: (a) why the local educational agency cannot support the cost of the facility with local monies, (b) planned utilization of the facility when migrant children are not in attendance, and (c) the location of the structure as a separate building or as part of the school complex. Moreover, Section 116d.9 of the Title I regulations for migrant programs requires that the State educational agency (SEA) maintain administrative control of any property acquired for the Title I program and that the SEA, or if not the SEA because of the State law, then another State agency must have title to the property. The use of Title I

funds to construct facilities for the Title I program must, of course, be incorporated in the State's approved application. (August 25, 1977)

Title I does allow for limited construction or renovation of educational facilities only when absolutely necessary for purposes of carrying out the intent of a Title I project. The imbalance of the migrant/non-migrant composition of the student enrollment at...(a school)...and the fact that...migrant students are dispersed among the various grade levels at the school would not constitute justification of the use of Title I, ESEA, migrant program funds for construction or renovation of the facilities for Title I purposes only. (December 5, 1977)

Question: What are the migrant education program requirements regarding SEA submittal of Performance and Financial Status Reports?

Response: ...beginning with Fiscal Year 1979 grants to State educational agencies for programs to meet the special educational needs of migratory children, the Office of Education will require SEAs to submit Financial Status and Performance Reports only annually. In accordance with Section 100b.403(d) (of the General Provisions for Programs Regulations), these reports "...shall be due ninety days after the end of the grant year." (April 26, 1978)

Question: What is OE policy with respect to the status of summer migrant education project personnel as either "seasonal" or "non-seasonal" for purposes of unemployment compensation coverage?

Response: The classification of employees as "seasonal" or "non-seasonal" is determined under individual State laws for unemployment insurance coverage purposes. These determinations are not reviewable by OE. The Office of Education does regulate with respect to the payment of program funds into an unemployment insurance fund. These regulations, however, do not displace State law with respect to which persons employed in the State are entitled to unemployment compensation or the amount of their entitlement. (September 15, 1978)

federal register

MONDAY, NOVEMBER 13, 1978
PART III

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

■

GRANTS TO STATE EDUCATIONAL AGENCIES

Migratory Children

[4110-02-M]

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 116d—GRANTS TO STATE EDUCATIONAL AGENCIES TO MEET THE SPECIAL EDUCATIONAL NEEDS OF MIGRATORY CHILDREN

Educationally Deprived Children

AGENCY: Office of Education, HEW.

ACTION: Final regulations.

SUMMARY: These final regulations are required by section 503 of the Education Amendments of 1972 and establish the rules governing the allocation, distribution, and use of grants under section 122 of title I of the Elementary and Secondary Education Act of 1965. These grants are awarded to State educational agencies to conduct programs and projects designed to meet the special educational needs of migratory children of migratory agricultural workers or migratory fishers.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the FEDERAL REGISTER. The effective date is changed by statute if Congress disapproves the regulations or takes certain adjournments. If you want to know the effective date of these regulations, call or write the Office of Education contact person.

FOR FURTHER INFORMATION CONTACT:

Mr. Vidal A. Rivera, Jr., Chief, Migrant Branch, Division of Education for the Disadvantaged, U.S. Office of Education, 400 Maryland Avenue SW. (Room 3523, ROB-3), Washington, D.C. 20202, telephone 202-245-2427.

SUPPLEMENTARY INFORMATION:

BACKGROUND

A notice of proposed rulemaking published in the FEDERAL REGISTER on July 8, 1975 (40 FR 28622), proposed to amend title 45 of the Code of Federal Regulations by adding a new part 116d. This would govern the program authorized by section 122 of title I of the Elementary and Secondary Education Act, as amended by Pub. L. 93-380 (Education Amendments of 1974) (20 U.S.C. 241c-2).

Interim final regulations were published in the FEDERAL REGISTER on July 13, 1977 (42 FR 36076). These included a discussion of the comments received in response to the notice of proposed rulemaking. The preamble to these interim final regulations (which took effect on September 5, 1977) announced that, in addition to conducting five public hearings, the Office of Education would accept written comments on the interim final regulations through August 29, 1977.

A subsequent FEDERAL REGISTER notice on October 27, 1977 (42 FR 56608), announced that three additional hearings would be held, and that the comment period would be extended through December 9, 1977.

As reorganized, Part 116 (published in the FEDERAL REGISTER on September 28, 1976 at 41 FR 42894) contains provisions applicable to all title I programs. Therefore, part 116, part 116d, and the applicable provisions of 45 CFR Parts 100, 100a, 100b, and 100c (the Office of Education General Provisions Regulations) constitute all of the regulations governing Title I programs conducted by State educational agencies for migratory children of migratory agricultural workers or migratory fishers.

These regulations do not implement the changes in the title I, migrant program that will be made by the Education Amendments of 1978, expected to be enacted in the near future. Instead, these final regulations are being published now in response to the large amount of public comment received on the 1977 interim final regulations and to implement the Department's Operation Common Sense. These regulations clarify apparent misinterpretations of the interim final regulations and, where desirable, make many of the regulatory changes requested by the public. It is also believed that, thus improved, these regulations are consistent as far as possible with the intent of Congress in enacting the Education Amendments of 1978. Broad public participation will again be sought in implementing the changes necessitated by the 1978 amendments. Therefore, a notice of proposed rulemaking that reflects both the 1978 amendments and additional administrative experience may be anticipated in the near future.

SECTION 503—PROCEDURES AND EFFECT

Section 503 of the Education Amendments of 1972 requires the Commissioner to: (a) Study all rules, regulations, guidelines, or other published interpretations or orders issued by him or her or the Secretary after June 30, 1965, in connection with, or affecting, the administration of Office of Education programs; (b) report to the Committee on Labor and Public Welfare (now the Committee on Human Resources) of the Senate and the Committee on Education and Labor of the House of Representatives concerning this study; and, (c) publish in the FEDERAL REGISTER these rules, regulations, guidelines, and orders with an opportunity for public hearings on the published matters.

These regulations reflect the results of this study as it pertains to programs authorized under section 122 of title I of the Elementary and Secondary Education Act, as amended. At present, there are no guidelines relating to part 116d.

CITATION OF LEGAL AUTHORITY

As required by section 431(a) of the General Education Provisions Act, as amended (20 U.S.C. 1232(a)), a citation of statutory or other legal authority for each section of these regulations has been placed in parentheses on the line following the text of the section.

SUMMARY OF CHANGES FROM THE INTERIM FINAL REGULATIONS

The final regulations have been written according to the principles of the Department's Operation Common Sense. The purpose of Operation Common Sense is to produce readable and understandable regulations that reflect Congressional intent and that do not unnecessarily regulate recipients of Federal funds, including State and local governments. Therefore, numerous changes in wording have been made to promote clarity and ease of understanding. In response to public comment and further program experience, some provisions have been added to the final regulations, some provisions of the interim final regulations have been clarified, and some have been deleted.

Most importantly, these final regulations:

(1) Clarify and expand the definitions of "agricultural activity," "currently migratory child," and "formerly migratory child";

(2) Strengthen the requirement that an eligible child will not be prevented from benefiting fully from title I migrant education services because of limited English language skills;

(3) Strengthen the requirements for parental involvement and require parent advisory councils at both the State and operating agency levels;

(4) Clarify that the Commissioner does not require a State to obtain documentary evidence of eligibility or civil status from a migratory child or his or her parent or guardian;

(5) Clarify the conditions under which the Commissioner or a State educational agency (SEA) may enter into a special arrangement with a public or nonprofit private agency;

(6) Delete the requirement that a State obtain annually the signature of the parent or guardian of each participating formerly migratory child;

(7) Clarify a State's obligation to identify and recruit all eligible migratory children; and

(8) Clarify the extent to which a State must utilize the migrant student record transfer system.

The vast majority of the changes in the final regulations do not, however, effect a substantive change in the title I migrant education program. The following list of sections of the final regulations summarizes in greater detail the substantive changes made from the interim final regulations. Specific responses to comments received on the interim final regulations are published in the appendix to these final regulations.

§ 116d.1 No change.

§ 116d.2 The definition of "agricultural activity" has been clarified and expanded to include "any activity directly related to the cultivation or harvesting of trees."

For clarity, a new definition of "formerly migratory child" has been added. This provides that a formerly migratory child is one "who: (a) Was eligible to be counted and served as a currently migratory child within the past 5 years, but is not now a currently migratory child; (b) lives in an area served by a title I migrant education project; and (c) has the concurrence of his or her parent or guardian to continue to be considered a migratory child."

Also, a definition of the term "operating agency" has been added, which includes both local educational agencies and other public and nonprofit private agencies.

§ 116d.3 No change.

§ 116d.4 This is a new section. However, it merely restates § 116d.3(c) of the interim final regulations.

§ 116d.5 No change. However, this section has been reworded to clarify that in conducting a State program, an SEA may act in one or more of three ways. First, the SEA may act directly. Second, it may make a subgrant to an LEA or a group of these agencies. Third, it may enter into a special arrangement with a public or nonprofit private agency.

§ 116d.6 Several changes have been made. Under this section the application of an operating agency must now include a description of how the operating agency will comply with the requirements for soliciting parental involvement and for establishing and consulting with a parent advisory council. The operating agency must also describe how it will assure that eligible children are not prevented from benefiting fully from the project because of limited English language skills.

The requirement in § 116d.6(b) of the interim final regulations that SEA's routinely forward to the Commissioner copies of the applications of operating agencies has been deleted. Section 116d.6(b) now requires SEAs to forward only those applications that are requested by the Commissioner.

§§ 116d.7 through 116d.11 No change.

§ 116d.12 Section 116d.12 has been rewritten to clarify that an SEA or operating agency must make a written record of the basis on which eligibility has been determined for each child who is counted or served.

Additional language has been added to clarify that a State is not required to obtain documentary proof of eligibility or civil status from the child or his or her parents or guardian. Instead, the State may rely on credible information provided by the child or his or her parents or guardian.

§§ 116d.21 through 116d.23 No change.

§ 116d.24 This is a new section. It states the conditions under which an SEA may enter into a special arrangement with a public or nonprofit private agency to conduct a project. These conditions parallel those under which the Commissioner may make a special arrangement under § 116d.25.

§ 116d.25 This section establishes the conditions under which the Commissioner may enter into a special arrangement. It restates § 116d.24 of the interim final regulations, and the conditions follow those provided in section 122(a)(2) of the Act. This section also provides that the Commissioner may not enter into a special arrangement until after the affected SEA has had notice and been given an opportunity for a hearing.

§ 116d.26 This is a new section. It clarifies that § 116.6(b), pertaining to complaint resolution procedures, applies to an SEA's administration of the State program. It also requires the SEA to develop appropriate complaint resolution procedures for projects that last fewer than 60 days.

This section clarifies that the Commissioner may review an SEA's resolution of a complaint and, when necessary, issue additional orders or enter into a special arrangement.

§ 116d.31 This section merely restates § 116d.31(a) of the interim final regulations.

§ 116d.32 This section, which replaces § 116d.31(b) of the interim final regulations, makes several changes. It requires that a State application contain:

(a) A description of the State's efforts to identify and recruit all eligible migratory children;

(b) An appropriate explanation, if the State proposes to serve fewer than the number of identified eligible school-aged migratory children;

(c) A description of the measures the SEA will take to assure that an eligible child is not prevented from benefiting fully from program services because of limited English language skills; and

(d) An assurance that the SEA will transfer the educational records of participating children in accordance with the Family Educational Rights and Privacy Act of 1974.

In addition, this section provides some examples of intrastate and interstate coordination in connection with the requirement that an SEA take steps to provide continuity in the education of participating migratory children.

§ 116d.33 No change. This section restates § 116d.31a of the interim final regulations.

§ 116d.34 No change. This section restates § 116d.32 of the interim final regulations.

§ 116d.35 This section deletes the requirements, imposed by § 116d.35(c) of the interim final regulations, that the eligibility of each formerly migratory child must be supported by the signature of a parent or guardian—as proof of parental concurrence for the child's participation—and that this signature must be secured annually.

§ 116d.36 No change.

§ 116d.37 Several changes have been made. This section now provides that "each SEA shall take the necessary steps to assure effective parental involvement throughout the State program."

It also requires parent advisory councils at both the State and operating agency levels. States may establish parent advisory councils at the operating agency level now, for operations during fiscal year 1979. In any event, § 116d.37 shall apply to SEA applications submitted for fiscal year 1980 funds.

Finally, it provides that a majority of the membership of both State and operating agency advisory councils must be comprised of parents of children served.

§ 116d.38 A change has been made. This section deletes § 116d.38(c) of the interim final regulations, which stated the types of information that an SEA must include in its application in support of its request to use title I migrant education funds to provide day care services.

The new section, however, maintains the requirement that the Commissioner's specific approval for this type of expenditure of program funds is needed, and it does not alter the criteria by which the Commissioner will evaluate these requests.

§ 116d.39 Two changes have been made. First, the final regulations require that the Commissioner determine, before approving a State application, that the "SEA has made every

reasonable effort to identify and recruit all eligible currently and formerly migratory children."

Second, this section clarifies that full utilization of the migrant student record transfer system, which is required of all States, includes "the transfer of the most current academic and health information available for the children served."

§§ 116d.40 and 116d.41 No change.

After consideration of the comments received, part 116d of title 45 of the Code of Federal Regulations is amended to read as follows.

(Catalog of Federal Domestic Assistance No. 13.429, Educationally Deprived Children—Migrants.)

Dated: September 25, 1978.

JOHN ELLIS,
Acting U.S. Commissioner of Education.

Approved: October 30, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary of Health, Education, and Welfare.

Title 45 of the Code of Federal Regulations is amended by revising part 116d as set forth below:

Subpart A—General

Sec.
116d.1 Applicability of regulations.
116d.2 Definitions.

Subpart B—Managerial Responsibilities of State Educational Agencies

116d.3 State applications.
116d.4 Annual program plans.
116d.5 Designation of operating agencies.
116d.6 Participation of operating agencies.
116d.7 Supervision of State programs.
116d.8 Amendments to applications.
116d.9 Title and control of property.
116d.10 Sources of funds for State administration.
116d.11 Adjustment of funds not needed by an operating agency.
116d.12 Child eligibility.
116d.13-116d.20 [Reserved]

Subpart C—Amounts Available for Grants and Payments

116d.21 Total amount available for grants.
116d.22 Entitlements.
116d.23 Payments.
116d.24 Special arrangements with the State educational agency.
116d.25 Special arrangements with the Commissioner.
116d.26 Complaint resolution procedures.
116d.27-116d.30 [Reserved]

Subpart D—Program Requirements

116d.31 Use of program funds.
116d.32 Contents of State applications.
116d.33 Programs of instruction for preschool migratory children.
116d.34 State budgets.
116d.35 Services to formerly migratory children.
116d.36 Comparable access to State and locally funded educational facilities and services.
116d.37 Parental involvement.
116d.38 Supporting services.
116d.39 Criteria for the approval of State applications.
116d.40 Cooperative programs.
116d.41 Disapproval of State applications.

AUTHORITY: Sec. 101(a)(2)(E), Pub. L. 93-380, 88 Stat. 492 (20 U.S.C. 241c-2), unless otherwise noted.

Subpart A—General

§ 116d.1 Applicability of regulations.

These regulations govern programs and projects to meet the special educational needs of migratory children of migratory agricultural workers or migratory fishers. Section 122 of title I of the Elementary and Secondary Education Act of 1965 ("the Act") authorizes the Commissioner to award grants to State educational agencies (SEA's) to support these programs and projects. Unless otherwise noted, these grants are also subject to the provisions of two other parts of this chapter: Part 116, general requirements that apply to all title I programs, and the applicable provisions of parts 100, 100a, 100b, and 100c, relating to fiscal, administrative, property management, and other matters.

(20 U.S.C. 241c-2.)

§ 116d.2 Definitions.

"Agricultural activity" means:

(a) Any activitiy directly related to the production or processing of crops, dairy products, poultry, or livestock for initial commercial sale or as a principal means of personal subsistence;

(b) Any activitiy directly related to the cultivation or harvesting of trees; or

(c) Any activity directly related to fish farms.

"Currently migratory child" means a child:

(a) Whose parent or guardian is a migratory agricultural worker or a migratory fisher; and

(b) Who has moved within the past twelve months from one school district to another—or, in a State that is comprised of a single school district, has moved from one school administrative area to another—to enable the child, the child's guardian, or a member of the child's immediate family to obtain temporary or seasonal employment in an agricultural or fishing activity. This definition includes a child who has been eligible to be served under the requirements in the preceding sentence, and who, without the parent or guardian, has continued to migrate annually to enable him or her to secure temporary or seasonal employment in an agricultural or fishing activity.

"Day care services" means the custodial care of children or infants that satisfies the standards of applicable State law.

"Fishing activity" means any activity directly related to the catching or processing of fish or shellfish for initial commercial sale or as a principal means of personal subsistence.

"Formerly migratory child" means a child who:

(a) Was eligible to be counted and served as a currently migratory child within the past 5 years, but is not now a currently migratory child;

(b) Lives in an area served by a title I migrant education project; and

(c) Has the concurrence of his or her parent or guardian to continue to be considered a migratory child.

NOTE.—There is a total of 6 years of program eligibility—a 1-year status as a "currently migratory child" and up to 5 additional years as a "formerly migratory child."

For the purpose of this definition, "area served by a title I migrant education project" means any portion of the geographic area that is within the legally prescribed boundaries of a local educational agency (LEA) or a combination of these agencies, and within whose boundaries there are currently or formerly migratory children who are receiving title I migrant education services or who will receive these services within the current program period.

"Guardian" means:

(a) A person who has been appointed to be the legal guardian of the child through formal proceedings in accordance with State law; or

(b) A person who the SEA determines would be appointed to be the legal guardian of the child under the law of the child's domiciliary State if formal guardianship proceedings were undertaken; or

(c) A person standing in the place of a parent to the child.

"Migratory agricultural worker" means a person who has moved from one school district to another—or, in a State that is comprised of a single school district, from one school administrative area to another—within the past 12 months to enable him or her to obtain temporary or seasonal employment in an agricultural activity.

"Migratory fisher" means a person who has moved from one school district to another—or, in a State that is comprised of a single school district from one school administrative area to another—within the past 12 months to enable him or her to obtain temporary or seasonal employment in a fishing activity.

"Operating agency" means an LEA to which an SEA makes a subgrant of title I migrant education funds, or public or nonprofit private agency with which an SEA makes a special a

rangement to carry out a title I migrant education project.

"Project" means one or a set of activities that:

"(a) Is composed of instructional services, or supporting services as explained in § 116d.38, or both;

(b) Is provided by an SEA directly, though an LEA, or through a public or nonprofit private agency to migratory children living in a particular area of a State; and

(c) Is designed to meet the objectives of a State program under § 116d.32(e).

"State program" means an overall plan for services, activities, personnel, and materials included in an SEA's application for a grant under § 116d.3 to meet the special educational needs of migratory children.

(20 U.S.C. 241c-2.)

Subpart B—Managerial Responsibilities of State Educational Agencies

§ 116d.3 State applications.

(a) *General.* To receive a grant, an SEA shall submit to the Commissioner an application that:

(1) Is in the form required by § 100a.43 of this chapter;

(2) Is signed by the chief executive officer of the SEA or by his or her designated representative;

(3) Contains all the assurances and other information required by §§ 116d.5, 116d.7, 116d.8, 116d.32, 116d.34, and 116d.36 of this part and by part 116 of this chapter; and

(4) Requests approval to use, during the fiscal year covered by the application, any title I migrant education funds made available to the SEA for the preceding fiscal year, but not yet obligated by it.

(b) *Receipt of applications.* The Commissioner may decline to consider applications that are received after the date established for their receipt.

(20 U.S.C. 241c-2; 1232c(b).)

§ 116d.4 Annual program plans.

An application that is submitted under § 116d.3 constitutes the annual program plan as required by section 434(b) of the General Education Provisions Act and must conform to the requirements of that section.

(20 U.S.C. 241c-2; 1232c(b).)

§ 116d.5 Designation of operating agencies.

An SEA shall identify in its application the agency or agencies that it has designated to operate the State program. If all or part of a State program is to be operated directly by the SEA, the State shall identify in its application its personnel and other resources, including any resources that will be made available to it by contract or other arrangement, that will be employed to conduct the State program. If all or part of a State program is to be operated through one or more LEA's as subgrantees or through one or more special arrangements with public or nonprofit private agencies, the SEA shall identify them in its application.

(20 U.S.C. 241c-2; 1232c(b).)

§ 116d.6 Participation of operating agencies.

(a) If all or part of a State program is to be conducted through one or more operating agencies, the SEA shall require each of them to submit to it an application that includes:

(1) A description of the project to be carried out by the operating agency;

(2) An explanation of the relationship between the project and the State program;

(3) The objectives to be achieved for each grade group;

(4) The estimated number of eligible migratory children living in the area to be served by the project, and the estimated number of these children who will be served. If the operating agency proposes to provide migrant education program services, other than the identification and recruitment of children and the transfer of records, to fewer eligible school-aged migratory children than the number of these eligible children living in the area, it shall explain why;

(5) A description of each service to be provided and its estimated cost;

(6) The types and number of staff to be employed;

(7) A description of how the operating agency will comply with § 116d.37(a); and

(8) A description of how the operating agency assures that eligible migratory children will benefit fully from the project's services even if they do not speak English or have limited English language skills.

(b) The SEA shall review the applications of operating agencies and approve only those that comply with these regulations and conform to the State program approved by the Commissioner. The SEA shall send a copy of any approved applications (including any amendments) that are requested by the Commissioner, within ten days of the request.

(c) Each operating agency shall maintain records of all financial transactions relating to the project for the period of time required by section 434(a) of the General Education Provisions Act. Each operating agency shall also provide timely financial reports (including the financial status report prescribed by § 100b.403 of this chapter) to the SEA.

(d) An operating agency may not obligate, within the meaning of § 100b.55(c) of this chapter, title I migrant education funds before:

(1) The effective date of the SEA's approved application; or

(2) The date on which the operating agency's application is submitted to the SEA in substantially approvable form, whichever is later.

(20 U.S.C. 241c-2; 1232c(b).)

§ 116d.7 Supervision of State programs.

Each SEA shall describe in its application the procedures and resources that it will use to assure that projects are carried out in accordance with its State application as approved by the Commissioner.

(20 U.S.C. 241c-2; 1232c(b).)

§ 116d.8 Amendments to applications.

Under the following circumstances, an SEA shall submit to the Commissioner an amendment to its application—including an application to use funds made available for the previous fiscal year, but not yet obligated—that is signed by that agency's chief executive officer or his or her designated representative:

(a) When the SEA materially changes its administration of the approved State program, including its organization, policies, or operations;

(b) As soon as any information becomes available that is required by these regulations, but was not previously submitted; or

(c) If changes are made in the laws, such as appropriation laws governing the approved State program, and the Commissioner indicates that an amendment is required because of those changes.

(20 U.S.C. 241c-2; 1232c(b).)

§ 116d.9 Title and control of property.

(a) Except as provided by paragraph (b) of this section, an SEA shall maintain title to and control over all property that is acquired with its Title I migrant education funds.

(b) If a State law requires that an agency of the State other than the SEA maintain title to, or administrative control over, property that is acquired with title I migrant education funds, the SEA shall arrange for these functions to be carried out by the appropriate State agency. That State agency shall then be responsible for the proper exercise of these functions. However, the SEA shall retain the right to use, move, or otherwise dispose of this property in a manner designed to carry out most effectively the State program.

(20 U.S.C. 241c-2; 1232c(b).)

§ 116d.10 Sources of funds for State administration.

(a) *State administrative funds.* In administering title I programs for migratory children, the SEA shall use funds provided under section 143(b) of the Act to perform only those functions that are the same or similar to the administrative functions carried out by the SEA in connection with programs and projects under parts 116a, 116b, and 116c of this chapter. These functions include the:

(1) Preparation of the SEA's application to be submitted to the Commissioner;

(2) Design, publication, and distribution to operating agencies of the application, evaluation, performance, and financial report forms, and the appropriate instructions;

(3) Provision of technical assistance to operating agencies in developing their applications;

(4) Review of applications and reports from operating agencies;

(5) Monitoring of projects for compliance with the State program;

(6) Design, publication, and final preparation of the evaluation, performance, and financial reports that the SEA submits to the Commissioner;

(7) Maintenance of fiscal control and fund accounting; and

(8) Dissemination of information.

(b) *Program funds.* The SEA shall use title I funds made available for programs and projects under section 122 of the Act to perform only those functions that are unique to the title I migrant education program, or that are the same or similar to the functions performed by LEA's in the State under part 116a of this chapter. These functions include the:

(1) Statewide identification and recruitment of eligible migratory children;

(2) Intrastate and interstate coordination of programs and projects;

(3) Coordination of programs, and projects with other public and private agencies;

(4) Operation of the migrant student record transfer system;

(5) Processing of reports that are submitted by operating agencies under § 116d.6;

(6) Maintenance of inventories of property that is acquired with title I migrant education funds;

(7) Negotiation and awarding of contracts; and

(8) Evaluation activities of the State program, other than the design of evaluation report forms and the final preparation of the SEA's evaluation report to the Commissioner.

(20 U.S.C. 241c-2, 241g; 1232c(b).)

§ 116d.11 Adjustment of funds not needed by an operating agency.

(a) Each SEA that receives a title I migrant education grant shall issue to operating agencies a set or rules that prohibits the imprudent, wasteful, or extravagant expenditure of these funds. To promote the efficient administration of the State program, the SEA shall include in these rules a provision that permits the SEA to make appropriate adjustments to its subgrants and special arrangements to avoid paying funds to an operating agency in excess of its actual needs.

(b) These adjustments shall be based on periodic reports of the operating agency's actual expenditures. Following an adjustment, the SEA may increase the funding of one or more other operating agencies that demonstrate a need for additional funds. Each operating agency affected by an adjustment shall amend its project application to reflect that adjustment and shall note the adjustment in its final financial report.

(20 U.S.C. 241c-2; 1232c(b).)

§ 116d.12 Child eligibility.

An SEA or an operating agency shall not count a child under § 116d.21 or provide program services to that child until the agency has:

(a) Determined that the child is either a currently or formerly migratory child, as defined under § 116d.2; and

(b) Made a written record of the basis on which the child's eligibility was determined.

In determining eligibility, SEA or an operating agency may rely on credible information from any source, including that provided by the child or his or her parent or guardian. An SEA is not required to obtain documentary proof of either the child's eligibility or civil status from the child or his or her parent or guardian.

(20 U.S.C. 241c-2; 1232c(a); 1232c(b).)

§§ 116d.13-116d.20 [Reserved]

Subpart C—Amounts Available for Grants and Payments

§ 116d.21 Total amount available for grants.

The Commissioner determines for each fiscal year the total amount of the title I migrant education grant for which the SEA in each State (including the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, Wake Island, the northern Mariana Islands and the Trust Territory of the Pacific Islands) may apply according to sections 122(b), 124, and 125 of title I of the Act and section 843(d) of Pub. L. 93-380. The Commissioner determines these total amounts on the basis of the number of eligible migratory children in each State as shown by the migrant student record transfer system or by any other system that the Commissioner believes most accurately reflects the actual number of eligible migratory children.

(20 U.S.C. 241c-2; 241c-4; 241-5.)

§ 116d.22 Entitlements.

(a) *Entitlement based on the estimated cost of the program.* The SEA of each State is entitled to receive a title I migrant education grant in the amount that the Commissioner determines necessary to carry out its approved State program. Except as provided by paragraph (d) of this section, this amount may not exceed the total amount available to that State as determined by the Commissioner under § 116d.21.

(b) *Informational basis for determining the amount of entitlement.* The Commissioner determines the amount of the title I migrant education grant that an SEA is entitled to receive on the basis of the current information available to the Commissioner at the time that the application is approved. This includes information about the number of children to be served and the nature and scope of the State program. The Commissioner may adjust this amount later in the fiscal year on the basis of additional information available then.

(c) *Consideration of the cost of past and future activities and the amount of funds available.* The information on which the Commissioner determines the amount of the title I migrant education grant to which an SEA is entitled includes:

(1) The total amount for which the SEA may apply as determined under § 116d.21;

(2) The cost of completed program activities under previous grants, and the number of children who were served;

(3) The estimated cost of activities not yet begun under the preceding grant, and the number of children who will be served;

(4) In the case of a request for an increase in the grant amount previously determined by the Commissioner to be needed to carry out the State program, the estimated cost of providing additional program services before the end of the grant period and the number of children who would receive additional services; and

(5) The unused amount of the SEA's preceding title I migrant education grant.

(d) *Reallocation of excess funds.* If the Commissioner determines that the total amount for which an SEA may apply, as determined under § 116d.21, exceeds the amount that is deter-

mined under this section to be needed to carry out its State program, the Commissioner may allocate some or all of this excess to one or more other SEA's whose total amounts under § 116d.21 would otherwise be insufficient to serve the eligible migratory children in those States.

(20 U.S.C. 241c-2; Sen. Rep. No. 634, 91st Cong., 2d Sess. 12-13 (1970).)

§ 116d.23 Payments.

The Commissioner shall make all payments of title I migrant education funds based on the requirements of subpart E of part 100b of this chapter. The amount of these payments to an SEA may not exceed the amount to which the Commissioner determines that the SEA is entitled under § 116d.22, nor may it exceed the amount obligated under § 100b.55(c) of this chapter during the period covered by the application.

(20 U.S.C. 241c-2; 1232c(b).)

§ 116d.24 Special arrangements with the State educational agency.

An SEA may make a special arrangement with a public or nonprofit private agency or agencies to carry out a project if the SEA determines that:

(a) An LEA is unable or unwilling to conduct a project as defined in § 116d.2;

(b) The arrangement would result in more efficient and economic administration of the State program; or

(c) The arrangement would add substantially to the welfare or educational attainment of the migratory children who are eligible to be served.

(20 U.S.C. 241c-2.)

§ 116d.25 Special arrangements with the Commissioner.

(a) The Commissioner may make a special arrangement with a public or nonprofit private agency or agencies to carry out the purposes of section 122 of title I of the Act, if the Commissioner determines that:

(1) An SEA is unable or unwilling to conduct educational programs for the migratory children who are eligible to be served;

(2) The arrangement would result in more efficient and economic administration of these programs and projects; or

(3) The arrangement would add substantially to the welfare or educational attainment of the migratory children who are eligible to be served.

(b) The Commissioner may use all or part of the total amount of the title I migrant education grant as determined under § 116d.21, and which otherwise would have been made available to the affected SEA, to enter into one or more special arrangements.

(c) The Commissioner may not enter into a special arrangement until after the affected SEA has had reasonable notice and an opportunity for a hearing.

(20 U.S.C. 241c-2.)

§ 116d.26 Complaint resolution procedures.

(a) An SEA shall comply with § 116.6(b) of this chapter regarding complaint resolution procedures. In addition, an SEA shall establish an appropriate accelerated procedure for resolving complaints regarding title I migrant education projects that operate for fewer than 60 days.

(b) The Commissioner may review an SEA's resolution of a complaint. After the review the Commissioner may, when appropriate:

(1) Issue an order to the SEA prescribing additional actions to be taken by that agency to resolve the complaint; or

(2) Implement a special arrangement under § 116d.25.

(20 U.S.C. 241c-2.)

§§ 116d.27-116d.30 [Reserved]

Subpart D—Program Requirements

§ 116d.31 Use of program funds.

An SEA shall use title I funds made available for programs and projects under section 122 of the Act only to perform the functions described in § 116d.10(b) and to support projects.

(20 U.S.C. 241c-2; 1232c(b).)

§ 116d.32 Contents of State applications.

Each SEA shall include the following in its application:

(a) A list of the areas within the State where eligible currently migratory children are expected to live and eligible formerly migratory children are living. This list shall include the estimated dates on which the currently migratory children will arrive in and depart from these areas;

(b) Estimates of the number of eligible currently and formerly migratory children, by category, expected to live, or living, in the State. The SEA shall support these estimates by explaining how it arrived at them and by describing its efforts to identify and recruit all eligible currently and formerly migratory children;

(c) The number of eligible currently and formerly migratory children, by category, expected to be served. If the SEA expects to provide migrant education program services—other than the identification and recruitment of children and the transfer of records—to fewer eligible school-aged migratory children than the numbers estimated in the preceding paragraph, it shall explain why;

(d) A summary of the information—including information from other SEA's and from the migrant student record transfer system—that the SEA has regarding the special educational needs of the migratory children expected to live or living in the State during the period covered by the application. This summary must demonstrate that the SEA has obtained an accurate assessment of the cultural and linguistic backgrounds of these children and must include a description of the measures that the SEA will take to assure that a migratory child is not prevented from benefiting fully from the services provided by the title I migrant education program because he or she does not speak English or has limited English language skills;

(e) A detailed statement of the objectives, including performance criteria, of the state program, and how these objectives will be achieved. This statement must include:

(1) A description of each service to be provided and the estimated number of children by age and anticipated grade placement—including eligible children that are or will be enrolled in private schools—expected to receive each service;

(2) A description of any inservice training required, including the types of training, the types and number of staff members who will participate, and the frequency of their participation; and

(3) An estimate of the types and number of staff to be employed, as well as the facilities and materials to be used.

(f) A statement of how the effectiveness of the State program will be evaluated as required by § 116.43;

(g) A description of how the SEA will comply with § 116d.37(b);

(h) An explanation of the steps the SEA will take to assure the most continuity practicable in the education of the migratory children to be served, such as the exchange of course credits, both within and among States, and the intrastate and interstate sharing of program planning, evaluation, curriculum, and staff training materials. This explanation must also include a description of the information that the SEA will pass on to other SEA's regarding the migratory children, other than through the migrant student record transfer system;

(i) A description of the functions and staff salaries that the SEA proposes to charge to administrative funds under § 116d.10(a);

(j) A description of how the SEA proposes to comply with the requirements of § 116.45 of this chapter concerning the dissemination of public information; and

(k) An assurance that the SEA will transfer the educational records of the

migratory children participating in the State program in accordance with the Family Educational Rights and Privacy Act of 1974 and part 99 of this chapter (Privacy Rights of Parents and Students).

(20 U.S.C. 241c-2; 1232c(b); 1232g(b).)

§ 116d.33 Programs of instruction for preschool migratory children.

Instructional services designed to meet the special educational needs of preschool migratory children—as distinguished from day care or other supporting services under § 116d.38—are:

(a) Limited to children who are under the age at which public elementary education is provided under State law;

(b) Comprised primarily of activities designed to increase the children's readiness for instruction in the basic academic skills, and not primarily designed for custodial purposes; and

(c) Conducted by or under the direct supervision of a person who is qualified under State law to conduct the activities referred to in subsection (b).

(20 U.S.C. 241c-2.)

§ 116d.34 State budgets.

The SEA shall include in its application a detailed budget in the form prescribed by the Commissioner showing:

(a) The estimated total cost of meeting the SEA's objectives, including the estimated cost of each service, as described in § 116d.32(e).

(b) An estimate of the unobligated funds available from the preceding fiscal year's appropriation; and

(c) The amount of funds requested from the current fiscal year's appropriation.

(20 U.S.C. 1232c(b).)

§ 116d.35 Services to formerly migratory children.

A formerly migratory child may participate in a project that includes currently migratory children or may participate in a project developed solely for formerly migratory children, provided that the participation of formerly migratory children in the State program will not prevent the participation of currently migratory children or dilute the effectiveness of the State program for currently migratory children.

(20 U.S.C. 241c-2.)

§ 116d.36 Comparable access to State and locally funded educational facilities and services.

(a) *Assurances by the SEA.* Each SEA that applies for a grant shall include in its application an assurance that it will not conduct the State program through an LEA that does not provide migratory children with access to State and locally funded educational facilities and services comparable to those ordinarily provided to nonmigratory children living in the attendance area in which migratory children are being served. If, however, the project is conducted during a time of the year when the LEA is not providing State or locally funded educational facilities and services to nonmigratory children, the LEA is not required to provide them for the migratory children.

(b) *Relation to other requirements.* The provisions of paragraph (a) of this section do not modify the requirements of § 116.40 of this chapter, relating to supplanting State and local funds and services that the applicant is required by law to provide to all children or specifically to migratory children, or § 116a.26 (g) and (h) of this chapter, relating to the maintenance of comparability in school attendance areas where projects funded under part 116a of this chapter, and which serve migratory children, are being conducted.

(c) *Definition of comparable access.* The requirements of paragraph (a) of this section are satisfied only if migratory children have access to all State and locally funded instructional, health, nutrition, transportation, and other services on the same basis as provided by the LEA to nonmigratory children residing in the attendance area where migratory children are being served.

(20 U.S.C. 241c-2; 241e(a).)

§ 116d.37 Parental involvement.

Each SEA shall take the necessary steps to assure effective parental involvement throughout the State program. As a minimum, each SEA shall demonstrate in its application that:

(a) It will require each operating agency to solicit actively parental involvement in the planning, operation, and evaluation of its projects, and to establish a parent advisory council whose views will be considered concerning the operation and evaluation of the present project, and the planning of future projects. This advisory council must be composed of people who know the needs of migratory children. A majority of the advisory council members must be parents of children who were, are being, or will be served by that project.

NOTE.—An operating agency that provides services on a statewide basis need not create a separate advisory council, but must consult the State parent advisory council required by subsection (b).

(b) It has actively solicited parental involvement in the planning, operation, and evaluation of its State program, and has established a State parent advisory council whose views will be considered concerning the operation and evaluation of the present State program, and the planning of future State programs. This State parent advisory council must be composed of people who know the needs of migratory children. A majority of the advisory council members must be parents of children who were, are being, or will be served by the State program.

(20 U.S.C. 241c-2; 241e(a); 1231d.)

§ 116d.38 Supporting services.

(a) *General.* An SEA or an operating agency may provide health, welfare, or other supporting services with title I migrant education funds, but only if these services are necessary to enable eligible migratory children to participate effectively in instructional services.

(b) *Day care services.* Day care services for eligible migratory children may be provided only as a supporting service to eligible preschool and school-aged migratory children and only with the specific approval of the Commissioner. Each SEA desiring to use program funds for day care services shall include a request in its application, or in an amendment to that application, and shall provide adequate information to allow the Commissioner to determine that the proposed day care services are:

(1) Not available from any other source;

(2) Necessary to enable eligible migratory children to receive instructional services supported by title I; and

(3) Not extravagant in relation to the cost, the number of children who would receive day care, and the effect that the availability of the day care services would have on the participation of eligible migratory children in instructional services supported by title I funds.

(20 U.S.C. 241c-2.)

§ 116d.39 Criteria for the approval of State applications.

The Commissioner approves a State application only if it contains the information and assurances required by § 116d.3 and complies with all applicable requirements of parts 100, 100a, 100b, 100c, and 116 of this chapter. The Commissioner also determines that:

(a) Payments will be used to carry out the State program and to fund projects—including the acquisition of equipment and, where necessary, the construction of school facilities—that are designed to meet the special educational needs of eligible migratory children. These programs and projects must also be coordinated with similar programs and projects in other States,

including the transfer of the school records of these migratory children;

(b) Projects to be funded are of sufficient size, scope, and quality to hold reasonable promise of making substantial progress toward meeting the special educational needs of the migratory children to be served, particularly any need for improvement in the basic academic subjects;

(c) Projects designed to meet the special educational needs of preschool migratory children will be provided only if, considering the amount of funds available, these projects will not detract from the operation of projects for school-aged migratory children;

(d) The State program is planned and will be operated in coordination with programs administered under section 303 of the Comprehensive Employment and Training Act of 1973;

(e) In planning the State program, the SEA has consulted with other SEA's that conduct title I programs for migratory children and with other agencies that provide services for migratory children and that are knowledgeable of their needs;

(f) The SEA's plan for assuring continuity in the education of migratory children includes appropriate procedures for coordinating its State program with programs in other States and for utilizing fully the migrant student record transfer system, including the transfer of the most current academic and health information available for the children served; and

(g) The SEA has made every reasonable effort to identify and recruit all eligible currently and formerly migratory children.

(20 U.S.C. 241c-2.)

§ 116d.10 Cooperative programs.

Two or more SEA's may submit an application for a joint program or project to serve migratory children living in more than one State. With the Commissioner's approval, one agency may administer such a cooperative program under an appropriate interagency agreement.

(20 U.S.C. 241c-2; 1232c(b).)

§ 116d.11 Disapproval of State applications.

The Commissioner does not finally disapprove the application of an SEA until after reasonable notice and an opportunity for a hearing has been provided to that agency.

(20 U.S.C. 241c-2.)

APPENDIX

SUMMARY OF COMMENTS AND RESPONSES

The following is a summary of the comments received on the interim final regulations. Each comment is followed by a response that indicates any changes made or why no change was considered necessary. Specific comments are arranged in the order of the regulatory sections to which they pertain.

§ 116d.2 *Definitions.*

Comment. One commenter recommended that the definition of "agricultural activity" be made more specific with respect to the occupations included. Fifteen commenters recommended that this definition be extended to include a number of other migratory activities that are agriculturally related, but that fail to qualify under the present definition because of no direct involvement in the production or processing of a food crop for "human consumption."

Response. A change has been made. The definition has been expanded and clarified. It now provides for the eligibility of workers involved in the cultivation or harvesting of trees. Also, the term "human consumption," used in connection with the "production or processing of dairy products, poultry, or livestock," was not intended to be limited to human dietary consumption. For clarity, the term has been deleted.

It is not possible for the Commissioner to publish as part of these regulations an exhaustive list of all qualifying occupations.

Comment. Two commenters recommended that agricultural work for personal subsistence (self-employment) be included under the definition of "agricultural activity."

Response. A change has been made. The definition now includes the production or processing of crops, dairy products, poultry, or livestock "as a principal means of personal subsistence."

Comment. Six commenters recommended that the children of all families involved in occupationally-induced migration, whether or not the occupations involve agriculture or fishing, be eligible for program services.

Response. No change has been made. The requirement for involvement in agriculture or fishing is statutory.

Comment. Seven commenters recommended that the Commissioner formulate a standard Federal definition of "migratory child."

Response. No change has been made. The definitions of "currently migratory child" and "formerly migratory child" in these regulations are derived from statutory requirements that differ from the statutory requirements of other programs.

Comment. Twenty commenters recommended that the definitions of "currently migratory child," "migratory agricultural worker," and "migratory fisher" be revised to provide that moving from one school attendance area to another qualifies a child or worker as migratory. It was pointed out that children and workers may move from place to place within very large school districts.

Response. No change has been made. This recommendation has not been adopted for the same reason cited in the preamble to the interim final regulations (42 FR 36078). Pertinent legislative history indicates that Congress generally intended the program to serve children who migrate from school district to school district (Conference Report No. 93-1026, 93d Cong., 2d Sess. 142-143). However, the definitions do continue to cover children and workers who migrate from one school administrative area to another in States that are comprised of a single school district.

Comment. Seventeen commenters recommended that the definition of "currently migratory child" include migratory children of nonmigratory parents; six commenters recommended including nonmigratory children of nonmigratory seasonal farmworker parents.

Response. A change has been made. The definition of "currently migratory child" now includes "a child who has been eligible to be served (under the primary definition of "currently migratory child"), and who, without the parent or guardian, has continued to migrate annually * * *." In other words, once a child has qualified as a "currently migratory child" because both the child and the parent or guardian have migrated, that child may continue to be counted and served as a "currently migratory child" after the parent or guardian ceases to migrate, provided that the child continues to migrate annually. However, once the child ceases to migrate, that child may be counted and served only as a "formerly migratory child."

Furthermore, in order to be counted and served as either a "currently migratory child" or a "formerly migratory child," the child must have qualified at some previous point on the basis of being a migratory child of a migratory agricultural worker or a migratory fisher. The Commissioner has no authority to serve children who have never migrated or who have never had a parent or guardian who migrated.

Comment. Four commenters recommended that the period of program eligibility of a "currently migratory child" be extended from 12 months to 24 months.

Response. No change has been made. The Commissioner believes that migration within a 12-month period is a reasonable basis on which to qualify children as currently migratory because these children are suffering the

ill effects of current disruptions in their education. Furthermore, children may be counted and served as formerly migratory for up to 5 years after the first 12-month period.

Comment. Three commenters requested clarification with respect to the actual calendar time of program eligibility of formerly migratory children.

Response. A change has been made. The definition of "formerly migratory child" clarifies that there is actually a total of 6 years of program eligibility—a 1 year status as a "currently migratory child" and up to 5 additional years as a "formerly migratory child." As an example, a child whose last qualifying move took place on January 1, 1978, would qualify as a "currently migratory child" through and including December 31, 1978. On January 1, 1979, the child would change status to a "formerly migratory child" (provided that the concurrence of the parent is secured) and would be eligible for program services up to and including December 31, 1983.

Furthermore, if the formerly migratory child in this example is enrolled in a project that commences prior to January 1, 1984, that child may continue to participate in those specific project services until they are completed. At the termination of that specific project, however, that child may not be reenrolled unless another qualifying move occurs to reestablish the child as currently migratory.

With respect to the priority of services to formerly migratory children, § 116d.35 of these regulations provides that "a formerly migratory child may participate in a project * * * provided that the participation of formerly migratory children in the State program will not prevent the participation of currently migratory children or dilute the effectiveness of the State program for currently migratory children."

Comment. Five commenters recommended that the period of eligibility for a "formerly migratory child" be changed. The recommended time changes were 3, 7, and 8 years. Two commenters recommended maintaining the period of eligibility for a "formerly migratory child" at 5 years.

Response. No change has been made. The eligibility of a child as a "formerly migratory child" for up to 5 years is statutory.

Comment. One commenter recommended that the Commissioner formulate a standard Federal definition of "guardian."

Response. No change has been made. The Commissioner has no authority to establish a standard Federal definition of "guardian" for use by other agencies. However, the definition that applies for this program is quite broad and rarely, if ever, will result in precluding a person who is considered to be a "guardian" under another program.

Comment. Seven commenters recommended that the term "guardian," as used in the definition of "currently migratory child," be interpreted to include "crew leaders" who assume responsibility for transporting children to agricultural work sites or processing plants, arranging for their employment at those sites, and supervising them while they are there.

Response. No change has been made. The recommendation has not been adopted for the same reason cited in the preamble to the interim final regulations (42 FR 36077). "Crew leaders" who have custody of children for the primary purpose of supervising their employment are not considered to be persons standing in the place of a parent. Furthermore, to include persons other than those already included in the definition of "guardian" could result in counting and serving children not considered to be within the category of children that Congress intended to cover. For example, children of nonfarm families who join "crew leaders" only for summer agricultural employment could be counted.

However, the fact that a child is accompanied by a "crew leader" and not by a parent or guardian will not disqualify him or her if it is shown that the child's parent or guardian, as defined, is a migratory agricultural worker or migratory fisher, or that the child has been eligible to be served (under the primary definition of "currently migratory child") and has continued to migrate annually without the parent or guardian.

Comment. Three commenters recommended that a guardian should not be required to present a legal document certifying his or her guardianship status.

Response. No change has been made. The regulations do not require the presentation of a legal guardianship document.

Comment. Three commenters recommended that an individual who serves in a temporary parental capacity should be considered a guardian.

Response. No change has been made. The definition of "guardian" already includes a "person standing in the place of a parent to the child."

Comment. Three commenters recommended that "day haul" agricultural workers be included under the definition of "migratory agricultural worker."

Response. No change has been made. "Day haul" agricultural workers maintain a residence to which they return daily. Because they do not actually "move" across school district lines in the sense of establishing a new residence, they are not considered migratory.

Comment. One commenter requested a clarification of the term "personal subsistence," as used in the definition of "fishing activity."

Response. No change has been made. However, for clarification, "personal subsistence" means that the fish or shellfish are caught for direct consumption by the fisher or his or her family, rather than caught for wages or other income. A similar definition applies to "personal subsistence," as used in the revised definition of "agricultural activity."

Comment. Two commenters recommended that the definitions of "migratory fisher" and "currently migratory child" include those fishers and children who move from a school district to international waters and return to the same school district.

Response. No change has been made for the same reason cited in the preamble to the interim final regulations (42 FR 36078). The Commissioner interprets the law as not covering these fishers and their children. The legislative history of Pub. L. 93-380 indicates that only those fishers and their children who migrate from one school district to another school district are considered migratory (Conference Report No. 93-1026, 93d Cong., 2d Sess. 142-143).

Comment. Two commenters recommended a clarification of the definition of "project area."

Response. A change has been made. The definition of "formerly migratory child" now includes language to clarify "area served by a title I migrant education project." That language explains that the "area served by a title I migrant education project" is any area within the boundaries of an LEA, or a combination of LEA's, where there are migratory children who are receiving title I migrant education program services or who will receive these services within the current program period.

§ 116d.3 *State applications.*

Comment. Two commenters recommended that the standard application form be revised. One of these commenters recommended reducing the form's requirements for information. The other commenter recommended an application form that would require more information.

Response. No change has been made. The standard application form is prescribed by Attachment M of OMB Circular No. A-102 of September 12, 1977 (Uniform Administrative Requirements for Grants-In-Aid to State and Local Governments).

Comment. One commenter recommended that annual State applications not be required.

Response. No change has been made. The requirement for an annual State application is statutory.

Comment. One commenter recommended that the budget format of the standard application form be revised to parallel the budget format used by State and local educational agencies.

Response. No change has been made. The budget format is standard, as prescribed by Attachment M of OMB Circular No. A-102. However, the Commissioner is authorized by that circular to eliminate any requirements for budget entries that are not needed for program management. SEA's have been notified of these deletions.

Comment. Two commenters recommended that applicants be strictly required to submit all information with the initial application, including an identification of all operating agencies.

Response. No change has been made. Although an SEA is required to submit all the required information that is available at the time of submission of the application, it is permitted to amend its application "as soon as any information becomes available that is required by these regulations, but was not previously submitted * * *." (§ 116d.8(b).) Because of the unpredictable movement patterns of migrants, it would be unreasonable to enforce a stricter requirement regarding the inclusion of information in the State application.

Comment. Two commenters recommended a specific reference to the requirement for applicant agencies to comply with title VI of the Civil Rights Act of 1964.

Response. No change has been made. The regulations indicate that title I migrant education programs are also subject to the provisions of the Office of Education General Provisions Regulations. Section 100b.262 of those regulations requires compliance with the provisions of title VI of the Civil Rights Act of 1964 and 45 CFR Part 80 (Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health, Education, and Welfare Effectuation of title VI of the Civil Rights Act of 1964). It is not the intent of the title I migrant education program regulations to repeat general requirements that are found in the General Provisions Regulations. Furthermore, the standard application form prescribed by Attachment M of OMB Circular No. A-102 requires an assurance that the applicant will comply with title VI.

Comment. Six commenters recommended a specific reference to the requirement for providing migratory children with access to State and local facilities and services.

Response. No change has been made. Section 116d.36(a) of the final regulations already requires each SEA to provide an assurance that it will not conduct the State program through an LEA "that does not provide migratory children with access to State and locally funded educational facilities and services comparable to those ordinarily provided to nonmigratory children * * *."

§ 116d.6 *Participation of operating agencies.*

Comment. Three commenters recommended that SEA's not be required to submit the approved applications of operating agencies.

Response. A change has been made. The requirement in § 116d.6(b) of the interim final regulations that SEA's routinely forward copies of the applications of operating agencies has been deleted. Section 116d.6(b) now requires SEA's to forward only those applications that are requested by the Commissioner.

Comment. Three commenters recommended that SEA's be required to consult with teachers and migratory children with respect to the planning of programs and projects.

Response. No change has been made. Section 116d.37 requires each SEA to consult with parents and to consider their views in connection with planning the State program. this section also requires each SEA to establish a State parent advisory council which "shall be composed of people who know the needs of migratory children." These councils may include teachers and migratory children. Section 116d.32(g) requires each SEA to explain in its application how it will comply with § 116d.37(b).

Furthermore, §116d.37(a) also requires each operating agency to establish and consult a similar council. That council may also include teachers and migratory children.

Comment. One commenter recommended that applicants be required to assure the "size, scope, and quality" of projects.

Response. No change has been made. Section 116d.39(b) of these regulations provides that a State application will be approved only if the Commissioner determines that "projects to be funded are of sufficient size, scope, and quality to hold reasonable promise of making substantial progress toward meeting the special educational needs of the migratory children to be served * * *."

Comment. One commenter recommended that the information required in the application of an SEA and an operating agency be similar.

Response. A change has been made. Section 116d.6(a) regarding the contents of operating agency applications and § 116d.32 regarding the contents of State applications now share a number of common requirements. There are some differences, however, because of the different roles played by SEA's and operating agencies in the title I migrant education program.

Comment. One commenter recommended permitting an operating agency to carry over funds from one year to another rather than requiring the return to the SEA of all unobligated funds.

Response. No change has been made. Section 412 of the General Education Provisions Act (20 U.S.C. 1226) permits an SEA to carry funds over for 1 year after the fiscal year for which they were appropriated. However, Section 434(b) of the General Education Provisions Act (20 U.S.C. 1232c(b)) and 45 CFR 100b.18(b)—as well as § 116d.3(a)(4) of these regulations—require an SEA to, in effect, reapply with respect to the use of carryover funds.

The title I migrant education program is a State-operated program. Each year the SEA conducts a statewide needs assessment and designs a State program to meet those needs. However, because the children to be served are migratory, the needs of particular areas in the State may vary greatly from year to year. LEA's are not entitled to receive title I migrant education funds. Rather, an LEA is selected to participate in the State program solely because the SEA has determined that, through the participation of the LEA, the current needs of the State's migratory children may be most effectively met.

§ 116d.8 *Amendments to applications.*

Comment. One commenter recommended that amendments to applications not be permitted because they weaken the application procedure.

Response. No change has been made. It would be unreasonable, because of the mobility of the eligible migratory children, to expect a State never to have need to revise its program plan. The provisions for amending applications in § 116d.8 of the final regulations do not weaken the application procedure. In fact, all amendments undergo the same review process as initial applications.

§ 116d.9 *Title and control of property.*

Comment. One commenter recommended a stronger requirement with respect to the maintenance of an equipment inventory by the SEA.

Response. No change has been made. Property management is regulated by the Office of Education General Provisions Regulations and 45 CFR 116.42. Under 45 CFR 100b.215(d), an SEA that receives title I migrant education funds is required to maintain accurate property records and to conduct physical inventories of all nonexpendable personal property at least every 2

years. "Nonexpendable personal property" is defined in 45 CFR 100.1 as "tangible personal property, including equipment, having a useful life of more than 1 year and an acquisition cost of $300 or more per unit."

Comment. Four commenters recommended permitting the use of program-purchased equipment by nonmigratory children.

Response. No change has been made. Title I migrant education program funds may be used to purchase equipment essential to the effective implementation of this program only. Although nonmigratory children may happen to be present when services involving the use of migrant education program equipment are being provided to migratory children, any benefits that the nonproject children derive from these services must be incidental. Program-purchased equipment may not be used directly with non-migratory children, however. If program-purchased equipment is used for non-title I purposes, that equipment was either not needed for the title I project, or it should have been purchased with State or local funds.

§ 116d.10 *Sources of funds for State administration* (formerly, *Allocation of funds to administrative and program functions*).

Comment. Two commenters recommended an increase in the amount of funds provided under section 143(b) of title I of the Act for State administration.

Response. No change has been made. The amount of funds provided for State administration is statutory. However, the statute does not specify what portion of the funds authorized under section 143(b) is to be used for each of the various title I programs. Because the SEA both administers and carries out its program for migratory children, it may also perform a number of administrative-type activities, such as those listed in § 116d.10(b), that are performed by local educational agencies (LEA's) under part 116a or by State agencies under part 116b and 116c. These activities may be charged to program funds even though they are "administrative" in nature.

Comment. Six commenters requested a clarification of the division of "administrative" and "program" functions.

Response. A change has been made. Section 116d.10 has been revised to provide clearer guidance on this matter. However, the regulations retain the basic criteria for determining which activities are to be charged to section 143(b) funds and which are to be charged to migrant education program funds.

Section 116d.10 no longer refers to the two types of activities as "administrative" functions and "program" functions. All of the functions are in some sense "administrative." However, some functions are to be charged to State title I administrative funds; others are to be charged to migrant education program funds. A full discussion of this issue may be found in the preamble to the interim final regulations (42 FR 36077-8, July 13, 1977).

Comment. One commenter recommended including parents under § 116d.10(b) with respect to the use of program funds for inservice training.

Response. A change has been made. Inservice training is no longer listed as an "administrative" function to be charged to program funds. Instead, inservice training is regulated by § 116.36 of the general title I regulations. Parents who serve on an advisory council or who volunteer to provide a service to the project are eligible for inservice training paid for with migrant education program funds.

Comment. Two commenters recommended setting minimum and maximum amounts of funds to be used to support each administrative-type function.

Response. No change has been made. An SEA must adequately perform, according to its needs, each necessary administrative function. Furthermore, an SEA must use these funds reasonably, in accordance with part 100b, subpart G ("Cost Principles"), of the Office of Education General Provisions Regulations.

§ 116d.12 *Child eligibility* (formerly *Child eligibility and evidence of child eligibility*).

Comment. Twenty-one commenters contested the authority of the Office of Education to require a migratory child or his or her parent or guardian to provide sufficient documentation to establish the child's eligibility as migratory.

Response. A change has been made. Section 116d.12 has been revised to clarify that a migratory child or his or her parent or guardian is not required to provide documentary proof of the child's eligibility. It is the responsibility of the SEA or the operating agency to determine that a child is either a currently or formerly migratory child, as defined under § 116d.2, and to make a written record upon which the child's eligibility is determined. In determining eligibility, an SEA or an operating agency may rely on credible information provided by the child or his or her parent or guardian.

Comment. Six commenters recommended that the regulations clearly state that proof of American citizenship or legal alien status is not required of a migratory child or his or her parent or guardian.

Response. A change has been made. Section 116d.12 now states that an SEA or an operating agency is not required to obtain documentary proof of the child's civil status from either the child or his or her parent or guardian.

§ 116d.21 *Total amount available for grants.*

Comment. Two commenters requested a clarification of the formula that is used to determine the total amount of the title I migrant education grant for which an SEA may apply.

Response. No change has been made. Section 116d.21 provides a general explanation of how the total grant amount available to an SEA is determined. However, for clarification, a more detailed explanation of how State grant amounts are determined is provided here.

(1) A State accumulates one residency day for each day (during the calendar year period) that a migratory child resides in that State. Residency days for each migratory child are determined on the basis of that child's enrollment data in the migrant student record transfer system.

(2) A State's total of accumulated residency days is divided by 365 (each group of 365 accumulated residency days equals one full-time equivalent (FTE) migratory child).

(3) A State's total FTE of migratory children is then multiplied by 40 percent of the State's per pupil expenditure rate (adjusted to not less than 40 percent of 80 percent nor more than 40 percent of 120 percent of the national average per pupil expenditure rate).

The computed amount becomes the total amount available to that State for its title I migrant education grant, unless that State's computed amount results in an amount less than the State received in the prior fiscal year. Section 125 of title I of the Act provides that no State agency program shall receive in any fiscal year less than 100 percent of the amount that it received in the prior fiscal year.

Furthermore, the Commissioner is authorized by section 122(a)(2) of title I of the Act to use all or part of the amount available to an SEA to make special arrangements with other agencies for services to migratory children. Since fiscal year 1969, the Commissioner has withheld a proportionate amount of each State's entitlement to fund the migrant student record transfer system. The remaining amount is then made available to each SEA.

Comment. Fifty commenters recommended that the funding formula be expanded with respect to the age range of migratory children who are eligible to be counted.

Response. No change has been made. The funding formula (including the counting of only those migratory children aged 5–17) is statutory.

Comment. Four commenters recommended maintaining the full-funding for the migrant education program "off-the-top" of the total title I appropriation.

Response. No change has been made. Under Section 144 of the title I statute, all title I State agency programs (including the migrant education program) are fully-funded "off-the-top" of the total title I appropriation.

Comment. Two commenters recommended that the formula used in determining the grant amount to be made available to a SEA should use the child count from the same year as the grant award, and not the child count for the prior calendar year period.

Response. No change has been made. Because the title I program is "advance-funded"—i.e., funds are appropriated in 1 fiscal year for obligation by the Federal Government and use by the recipient in the following fiscal year—it is impossible to calculate the grant amount available to a State under the title I migrant education program on the child count from the same year as the grant award period.

However, the formula does use the child count from the most recent full calendar year period that is available. Thus, the size of a grant made available to a State for fiscal year 1979 is determined on the basis of the count of migratory children in that State during the period of January 1-December 31, 1977.

Comment. One commenter recommended the use of a "block grant" to State and local educational agencies instead of categorical aid for programs such as the title I migrant education program.

Response. No change has been made. The Act requires that title I migrant education funds be used for services to migratory children only.

Comment. Three commenters recommended that the Commissioner develop a procedure through which a State would be permitted to use a certain portion of "prospective" grant funds while final negotiations were being carried out with the Office of Education regarding the approval of its application.

Response. No change has been made. The obligation of funds by a grantee is regulated by the Office of Education General Provisions Regulations. Section 100b.35(d) states that funds shall not be obligated prior to the effective date of the approved State application. Section 116d.6(d) of the final regulations clarifies that an operating agency may not obligate funds before the effective date of the SEA's approved application or the date on which the operating agency's application is submitted to the SEA in substantially approvable form, whichever occurs later.

§ 116d.24 *Special arrangements with the State educational agency and § 116d.25 Special arrangements with the Commissioner* (formerly, *Special arrangements by the Commissioner to conduct migrant programs*).

Comment. A number of commenters made recommendations concerning special arrangements for services on the part of the Office of Education and participating SEAs. Eight commenters recommended that individuals and public and nonprofit private agencies be provided with a specific mechanism to petition the Office of Education for a special arrangement for services. Similarly, two commenters recommended that the regulations provide a specific procedure by which individuals and public and nonprofit private agencies may petition an SEA for a special arrangement for services.

In addition, five commenters specifically suggested that the regulations provide a procedure by which migratory parents could petition an SEA or the Office of Education for a special arrangement.

Response. A change has been made. Section 116d.24 has been rewritten to clarify that an SEA may make special arrangements with public or nonprofit private agencies to carry out a project. Section 116d.25 describes the Commissioner's authority to make special arrangements to carry out the purposes of section 122 of the Act. The conditions under which an SEA may make a special arrangement are essentially identical to those under which the Commissioner may make a special arrangement, and they follow the language of section 122(a)(2) of the Act.

Also, Section 116d.26 (*Complaint procedures*) has been rewritten. It makes clear that a participating SEA must establish a procedure by which it will resolve the complaints (alleging statutory or regulatory violations of the title I migrant education program) of parents and other individuals and organizations within an appropriate period of time, not normally to exceed 60 days. Moreover, § 116d.26(b) provides that the Commissioner may review an SEA's resolution of a complaint and take appropriate steps, including "implement[ing] a special arrangement under § 116d.25."

The Commissioner does not believe that the creation of distinct and possibly restrictive petition procedures are warranted. The existing complaint procedure is flexible enough to serve as an effective means by which a request for a special arrangement may be made.

Comment. Ten commenters requested that the regulations be more specific in terms of the conditions under which an SEA or the Commissioner may employ a special arrangement.

Response. No change has been made. The three conditions stated in § 116d.25, as those under which the Commissioner may make a special arrangement, follow the statutory language of section 122(a)(2) of the Act. Corresponding conditions in § 116d.24 govern an SEA's discretion to make a special arrangement. The language of the Act indicates that Congress intended to allow the Commissioner and each SEA considerable discretion in evaluating the need for a special arrangement.

§ 116d.31 *Use of program funds* (formerly titled *Use of funds*).

Comment. Five commenters recommended that the regulations permit a more liberal use of program funds for projects that involve a capital outlay, such as the construction of school facilities.

Response. No change has been made. The regulations permit appropriate use of Title I migrant education funds for construction; § 116d.39(a) provides that these funds may be used for the construction of school facilities "where necessary." This restrictive standard is imposed by section 122(a)(1)(A) of the Act. In addition, § 116.32, which is applicable to all title I programs, contains more specific guidance on the use of program funds for construction.

Comment. Three commenters requested that the regulations clarify the requirement that title I migrant education funds be used to supplement and not to supplant State and local funds.

Response. No change has been made. Section 141(a)(3) of the Act and § 116.40(a) require that title I funds be "used to supplement, and to the extent practical, increase the level of State and local funds that would, in the absence of such Federal funds be made available * * * [and] will not be used to supplant State and local funds * * *." (At the present time, the Office of Education is preparing additional interpretive guidance on these provisions.)

Comment. Three commenters requested a clarification of the phrase "imprudent, wasteful, or extravagant" as used in § 116d.11.

Response. No change has been made. These regulations (§ 116d.11) require that each SEA that "receives a title I migrant education grant shall issue to operating agencies a set of rules that prohibits the imprudent, wasteful, or extravagant expenditure of these funds."

As noted in the preamble to the interim final regulations (42 FR 36078), this standard is regarded as workable. Given the numerous possible circumstances, it is not possible to define more precisely what expenditures are reasonable and appropriate.

Comment. Seven commenters recommended permitting the use of title I migrant education funds as stipends to encourage school attendance.

Response. No change has been made. Section 122(a)(1) provides that title I migrant education funds must be used "to establish or improve * * * programs of education for migratory children * * *." Section 122(a)(1)(A) requires that these programs be "designed to meet the special educational needs of migratory children * * *." Standing alone, of course, the payment of money to a migratory child has no educational content and does not directly address his or her educational needs. To be permitted, any payment would have to be integrally related to a program of educational services—such as a work/study project—designed to meet the child's special educational needs. In this case, the payment of money may be said to have educative content in its own right.

In addition, any payment would have to be "necessary to enable eligible migratory children to participate effectively in instructional services," and would be subject to the requirement that the expenditure be "necessary and reasonable" within the meaning of part I(C)(a) of appendix B ("Cost Principles for State and Local Governments"), which applies to the title I migrant education program under 45 CFR 100b.81. Under these standards, for example, title I funds could not be used to pay stipends to migratory children to encourage them to attend educational programs that they are required to attend under State law.

Comment. Two commenters requested a more liberal use of funds for professional conferences, workshops, and in-service training.

Response. No change has been made. Depending upon the needs in an individual State, these activities may be supported with title I migrant education funds. Section 116.36 provides guidance concerning the appropriate use of these funds for pre-service and in-service training. These expenditures are also subject to the cost principles stated in Appendix B to 45 CFR Part 100, including the requirement that expenditures from program funds be "necessary and reasonable."

Comment. Two commenters recommended that the regulations encourage stronger fiscal and fund accounting controls.

Response. No change has been made. The present requirements assure effective fiscal control at the SEA and operating agency levels without imposing unnecessary burdens upon participating agencies. For example, § 116d.6(a)(5) requires an operating agency to describe each service it will provide and the estimated cost in its annual application to the SEA. Section 116d.6(c) requires an operating agency to maintain records of all financial transactions relating to a title I migrant education project for a period generally of 5 years and to provide timely financial reports to the SEA.

Section 116d.11 requires each SEA to issue to its operating agencies rules that prohibit the "imprudent, wasteful, or extravagant" expenditure of title I funds and requires operating agencies to reflect in their financial reports adjustments made to their subgrants.

Section 116d.34 provides that a State application must be accompanied by a budget "including the estimated cost of each service" to be provided as part of the State program. In addition, § 116d.10(a) provides that an SEA may use funds made available under section 143(b) of the Act to maintain "fiscal control and fund accounting" with respect to the State program.

Comment. Eight commenters suggested that a portion of each State's allocation of title I migrant education funds be earmarked for identification and recruitment of eligible migratory children, or, alternatively, that the regulations require an SEA to conduct recruitment efforts. Ten commenters recommended that the regulations require that all identified eligible migratory children in the State receive program services.

Response. A change has been made. Section 116d.39(g) of these regulations provides that a State application may not be approved by the Commissioner unless it demonstrates that "the SEA has made every reasonable effort to identify and recruit all eligible currently and formerly migratory children." Section 116d.32(b) requires an SEA to describe its recruitment efforts in its State application. In addition, as under the interim final regulations, § 116d.10(b) provides that an SEA may use program funds to identify and recruit eligible migratory children.

On the other hand, it is neither realistic nor appropriate to require that an SEA serve every identified eligible migratory child in the State. Some children may not exhibit special educational needs. Some may be served appropriately by other supplementary programs. And, it may not be feasible for the SEA to serve some children, especially those living in very remote areas.

However, § 116d.32(c) requires that if an SEA expects to serve fewer eligible school-aged migratory children than the number it has identified in its State application, it must explain why. Section 116d.6(a)(4) imposes a similar requirement on operating agencies.

Comment. A commenter recommended that these regulations more clearly indicate that in the title I migrant education program, the grantees are State, not local, educational agencies.

Response. A change has been made. Section 116d.1 clearly states that grants are awarded to SEA's. As § 116d.5 indicates, an SEA may conduct programs and projects directly, may make subgrants to one or more LEA's, or may enter into special arrangements with one or more public or nonprofit private agencies.

The definition of "operating agency" in § 116d.2 further clarifies that an LEA participates in the program as a subgrantee.

§ 116d.32 *Contents of State applications* (formerly § 116d.31(b) *Information in State applications*, and § 116d.39 *Criteria for approval of State applications*).

Comment. Five commenters recommended that these regulations require an individualized educational plan for each participating migratory child.

Response. No change has been made. Section 141(b) of the Act does not authorize the Commissioner to require an individualized written educational plan for each child. However, § 116.47 provides that "a State educational agency shall encourage where feasible applicant agencies * * * to provide for the development for each child participating in an approved program or project under * * * title I, an individualized written educational plan * * * agreed upon jointly by the applicant agency, a parent or guardian of the child, and when appropriate, the child."

Comment. Two commenters suggested requiring programs to include activities—beyond basic instructional programs—such as nutrition education, guidance counseling, or home-school coordination. Another commenter said these regulations should encourage the provision of enrichment, and not just compensatory services to migrant children. Still another suggested emphasizing specific disciplines such as language skills, mathematics, science, and music.

Response. No change has been made. The title I migrant education program is a supplementary, compensatory educational program intended to address the special educational needs of participating migratory children. If the eligible migratory children exhibit special needs in the basic academic

subjects, title I services must be fashioned to meet those needs.

Section 116d.39(b) provides that projects must be "of sufficient size, scope, and quality to hold reasonable promise of making substantial progress toward meeting the special educational needs of the migratory children to be served, particularly any need for improvement in the basic academic subjects." Of course, the determination of the special educational needs of the migratory children who will participate is a responsibility of each SEA (see § 116d.32(d)), as is the design of the programs and projects to meet those needs.

Comment. One commenter recommended that the concept of basic skills as used in § 116d.39(b) be amplified by the words "readiness, developmental, and remedial."

Response. No change has been made. As the preamble to the interim final regulations noted (at 42 FR 36079), the Office of Education lacks the authority to require all of these concepts to be implemented in every State program.

Comment. Two commenters requested a clarification of the requirement that projects show "reasonable promise" of meeting the "special educational needs" of the participating migratory children. Several other commenters requested examples of "special educational needs."

Response. No change has been made. Under § 116d.39(b), the Commissioner determines that projects to be funded are of "sufficient size, scope, and quality to hold reasonable promise of making substantial progress toward meeting the special educational needs of the migratory children to be served • • •."

This provision implements section 141(a)(1)(B) of the Act, and although it is rewritten, it does not alter the substance of § 116d.39(b) of the interim final regulations.

The terms "reasonable promise" and "special educational needs" are statutory and are not otherwise defined in the Act. Still, the Commissioner believes that these terms are sufficiently clear in the regulations to provide the needed guidance and that a more detailed definition might unnecessarily restrict their application. Congress evidently intended the concept of "special educational needs" to have a broad applicability. This is consistent with the statutory framework that places responsibility on the SEA for diagnosing the particular needs of migratory children and for designing effective compensatory projects.

Comment. Six commenters recommended that these regulations encourage the provision of "summer-term" projects.

Response. No change has been made. The title I statute and these regulations make clear that each SEA is charged with the responsibility to determine the special educational needs of the eligible migratory children and to design appropriate programs and projects to meet those needs.

Section 122(a)(3) of the Act and § 116d.35 of these regulations establish a service priority that places currently migratory children before formerly migratory children. In some instances this may necessitate the use of summer-term projects.

Comment. One commenter suggested that each operating agency should be required to state its project objectives by "grade" as opposed to "grade group."

Response. No change has been made. As the preamble to the interim final regulations noted (42 FR 36077), uncertainties may exist as to the migratory children who will actually be present when a project is conducted. Reporting by grade group rather than by grade recognizes this uncertainty and is intended to provide flexibility to operating agencies.

Comment. A number of commenters recommended that bilingual and multicultural instructional services be required by the regulations when the linguistic circumstances of the children to be served warrant these services.

More specifically, 14 commenters said that bilingual or multicultural instruction should be required; two commenters recommended requiring classroom use of bilingual instructional materials; 9 commenters recommended requiring staff development activities to include bilingual and multicultural instructional program training; and 22 commenters recommended that the regulations require the employment of bilingual or multicultural teachers and other staff members.

Response. A change has been made. Section 116d.32(d) of these regulations requires a State application to demonstrate "that the SEA has obtained an accurate assessment of the cultural and linguistic backgrounds of (the eligible migratory children living or expected to live in the State)." It also requires each SEA to include in its application "a description of the measures that the SEA will take to assure that a migratory child is not prevented from benefiting fully from the services provided by the title I migrant education program because he or she does not speak English or has limited English language skills."

Similarly, § 116d.6(a)(8) requires an operating agency application to contain "a description of how the operating agency assures that eligible migratory children will benefit fully from the project's services even if they do not speak English or have limited English language skills."

The Act, however, does not authorize, and section 432 of the General Education Provisions Act (20 U.S.C. 1232a) forbids the Office of Education to require any particular type of curriculum, program of instruction, or staff. Certainly, bilingual or multicultural modes of instruction may be appropriate when the children to be served have particular linguistic needs; however, other curricular responses may also be appropriate.

It is an SEA's responsibility under § 116d.32(d) to evaluate the linguistic needs of the children to be served and to devise an educational program appropriate to those needs.

Comment. Six commenters recommended that the Office of Education closely regulate the minimum qualifications of migrant educators. Two commenters said these regulations should require the use of community outreach workers. Another commenter said these regulations should require that a minimum percentage of staff aides be migrants themselves.

Response. No change has been made. The Office of Education has no authority to regulate the qualifications of migrant educators, or the type or composition of the staff connected with a State program. It is the responsibility of an SEA to develop a State program appropriate to the needs of the migratory children living or expected to live in the State.

Comment. Two commenters requested that teachers paid with title I migrant education funds be permitted to participate in regular supervisory activities that benefit the entire school population. Another commenter suggested that teachers should be permitted to work with migrant children within the regular classroom setting.

Response. No change has been made. Neither the Act nor these regulations permit the use of title I migrant education funds to provide services to children other than those who are eligible to receive them. However, neither the Act nor these regulations prohibit an SEA or operating agency from providing title I-funded services to eligible migratory children while sharing an institutional setting with other, noneligible children. The requirement is that the services be sharply focused on, and tailored to, the needs of the eligible migratory children.

Reason requires, of course, that genuinely trivial variations from these principles, which do not diminish the effectiveness of program services to eligible migratory children, be permitted.

Comment. Sixteen commenters recommended encouraging services at the secondary school level with an emphasis on dropout prevention. Similarly,

three other commenters requested a secondary school emphasis specifically in the areas of career and vocational education.

Response. No change has been made. It is the responsibility of an SEA to design a State program that meets the needs of the migratory children living in the State.

Comment. Twelve commenters said the regulations should require extensive interagency coordination at the operating agency level with other programs providing services to migratory children. One commenter requested specific criteria for evaluating the extent of interagency program coordination.

Response. No change has been made. Section 116d.10(b) provides that an SEA may use funds made available under section 122 of the Act to "coordinat[e] * * * programs and projects with other public and private agencies." Section 116d.39(e) provides that before a State application may be approved, the Commissioner must determine that "in planning the State program, the SEA has consulted with other SEA's that conduct title I programs for migratory children and with other agencies that provide services for migratory children and that are knowledgeable o. their needs." Both of these provisions are contained in the interim final regulations (see §§ 116d.10(b)(2) and 116d.39(e), although worded slightly differently.

In addition, § 116.41(a) provides, in part, that "each application by (an SEA) for a grant under title I shall demonstrate that, in the development of such application, the applicant has taken into consideration benefits which are or may be available through other public and private agencies * * *. Such applications shall also demonstrate that the applicant has considered suggestions and offers of assistance which have been timely made by such agencies and which may aid in carrying out or making more effective the program or project for which application is made."

Additional regulations, such as the prescribing of criteria, applicable in all situations, are not warranted.

Comment. Eight commenters said these regulations should clearly require participation in and use of the migrant student record transfer system, including specifying the minimum health and education information that must be entered for each participating migrant child.

Response. A change has been made. Like the interim final regulations, § 116d.39(f) of the final regulations requires, as a condition of approval of a State application, that the SEA, in carrying out the State program, "utiliz[e] fully the migrant student record transfer system."

However, the following phrase has been added in the final regulations in order to clarify this requirement: "including the transfer of the most current academic and health information available for the children served."

In addition, § 116d.32(h) requires an SEA to include in its application "a description of the information about the migratory children that the SEA will pass on to other SEA's, other than through the migrant student record transfer system."

Comment. Nine commenters made general recommendations to foster improvement in the exchange among title I programs of general information and information about exemplary projects. Six commenters said these regulations should require that all migrant parents be fully informed concerning the State program, including the dissemination of bilingual program information, if necessary. Another suggested that all program documents be available to the public.

Response. No change has been made. Section 116d.32(j) requires that a State application contain a description of how the SEA proposes to comply with 45 CFR 116.45. Section 116.45 provides, in part, that an SEA must develop plans for "disseminating information concerning the provisions of title I, and the (SEA's) past and present title I programs—including evaluations of such programs—to parents and to the general public." It also requires each SEA to make available "such * * * documents as may be reasonably necessary to meet the needs of * * * parents or other members of the public for information related to the comprehensive planning, implementation, and evaluation of the title I program, but not including information relating to the performance of identified children and teachers."

Under this "reasonably necessary" standard, of course, SEA's are required to accommodate the needs of parents and others who possess limited English language skills.

Also, 45 CFR 116.44 provides, in part, that a State application must contain a description of the methods the SEA will employ "for reviewing, selecting, and disseminating to teachers and educational administrators significant information on the latest developments and most recent experiments in education so that such information will be available for use in program planning and operation. These methods may include * * * reports on the organization, operation, and outcome of projects under title I."

Furthermore, under § 116d.10(a)(8), an SEA may use administrative funds to support the dissemination of such information.

Comment. Nine commenters said these regulations should require each SEA to establish a separate complaint procedure for its title I migrant education program. Two commenters suggested that a private agency should be able to register a complaint.

Response. A change has been made. Section 116d.26 ("Complaint resolution procedures") specifically incorporates 116.6(b), which requires each SEA to establish procedures for investigating and resolving the complaints of "parents and other individuals and organizations" alleging violations of the title I Act or regulations.

Recognizing that title I migrant education projects are frequently of short duration, the final regulations call for an "appropriate accelerated procedure for resolving complaints regarding * * * projects that operate for fewer than 60 days."

Comment. A number of commenters made recommendations concerning the provision of services to preschool children. Twenty-two commenters said these regulations should encourage States to provide program services at the preschool level. Two commenters expressed concern because the definition of "preschool" varies from State to State. One commenter requested a clarification of the difference between "instructional" and "custodial" services.

Response. No change has been made. As in the interim final regulations, § 116d.39(c)—which provides, in part, that "projects designed to meet the special educational needs of preschool migratory children will be provided only if, considering the amount of funds available, these projects will not detract from the operation of projects for school-aged migratory children"—establishes a service priority in favor of school-aged migratory children. This follows the priority stated in section 122(a)(1)(D) of the Act.

In addition, as the preamble to the interim final regulations indicated (42 FR 36079), because preschool children do not generally generate funds under the statutory formula, school-aged migratory children are considered to take priority over preschool children.

Each State, of course, is free to establish the age at which free public education commences. The Act does not define the term "preschool"; however, 45 CFR 100.1 defines the term as "the educational level from a child's birth to the time at which elementary education is provided as determined under State law."

With respect to the distinction between "instructional" and "custodial" services for preschool children, § 116d.33(b), as did the interim final regulations, defines preschool instructional services as "comprised primarily of activities designed to increase the children's readiness for instruction in the basic academic skills, and not pri-

marily designed for custodial purposes." This definition is believed to be sufficiently precise.

§ 116d.35 *Services to formerly migratory children.*

Comment. A number of commenters objected to the secondary service priority of formerly migratory children. Some commenters said formerly migratory children should not be required to live in a project area in order to receive services.

Response. No change has been made. Section 116d.35 provides that a "formerly migratory child may participate in a project * * * provided that the participation of formerly migratory children in the State program will not prevent the participation of currently migratory children or dilute the effectiveness of the State program for currently migratory children." This secondary priority is required by section 122(a)(3) of the Act, which provides that currently migratory children "shall be given priority in consideration of programs and activities contained in (State application)."

Similarly, § 116d.2, which includes as part of the definition of a formerly migratory child that he or she "lives in an area served by a title I migrant education project," merely follows the statutory definition of such a child as stated in section 122(a)(3) of the Act: A "migratory child * * * shall be deemed to continue to be such a child for a period, not in excess of 5 years, during which he resides in the area served by the agency carrying on a program or project * * *."

Comment. Two commenters indicated that parental concurrence should not be required to establish a child's eligibility as a formerly migratory child. Five commenters said the regulations should not require the signature of a parent as evidence of concurrence. Two commenters objected to the interim final regulations' requirement of an annual parent signature as evidence of concurrence.

Response. A change has been made. Section 122(a)(3) of the Act requires parental concurrence as a condition of a child's eligibility as a formerly migratory child. Therefore, the definition of formerly migratory child in § 116d.2 requires "the concurrence of (the child's) parent or guardian to continue to be considered a migratory child."

However, § 116d.35 no longer requires the SEA or an operating agency to obtain the signature of a parent or guardian as evidence of concurrence. Of course, under § 116d.12 of the final regulations, an SEA or operating agency must still make for each child counted or served "a written record of the basis on which the child's eligibility was determined." As part of this written record, it may require a parental signature as evidence of concurrence.

§ 116d.37 *Parental involvement.*

Comment. A number of commenters suggested that these regulations should enlarge the scope of parental involvement in the title I migrant education program. Twenty-five commenters specifically recommended that parent advisory councils be required at the operating agency level. One commenter said the Office of Education should not approve a State application that fails to document council establishment.

Response. A change has been made. Section 116d.37 now requires parent advisory councils to be established and consulted at both the SEA and operating agency levels. These councils, which are to be consulted by the SEA and the operating agencies, must be composed of people "who know the needs of migratory children." Furthermore a majority of the members of the advisory councils at both the State and operating agency levels must be parents.

Comment. Sixteen commenters suggested that program funds should be provided for parent council activities. Five commenters said the regulations should include a detailed list of reimbursable parent council activities.

Response. No change has been made. As noted in the preamble to part 116 (41 FR 42896) and in the preamble to the interim final regulations for part 116d (42 FR 36079), the applicable standards for determining which parent council expenditures may be paid from program funds are stated in appendix B to part 100 of this chapter. (See 45 CFR 100b.81.)

Comment. Numerous commenters said the Office of Education should regulate extensively with respect to the composition, functioning, and duties of parent councils. Nine commenters said the councils should have "sign-off" authority on applications. Six commenters said parents should be permitted to appoint representatives when absent from meetings. three commenters said migratory children should be required within the membership of parent councils.

Two commenters recommended that parents of currently migratory children be given preference as members. Four commenters said the regulations should require direct communications between parent councils and the SEA. Four commenters said communication to parents on these councils should be bilingual, if necessary.

Response. A change has been made. As noted previously, § 116d.37 requires "effective parental involvement throughout the State program." In addition, § 116d.37 (a) and (b) require the establishment of parent advisory councils at both the SEA and operating agency levels. These councils which are consulted by the SEA and the operating agencies, must have parents as a majority of their members. Furthermore, these councils must be composed of people "who know the needs of migratory children."

However, the types of parental involvement and the design and operation of the parent advisory council are left to the SEA and the operating agencies which can best evaluate the particular needs of that State's or a local area's migrant population and structure an appropriate mechanism for parental participation.

It is expected, of course, that the views of these councils will be given serious consideration. These regulations require effective parental involvement. If this cannot be achieved without the use of bilingual communications, they must be employed.

Comment. Five commenters recommended a national parent advisory council.

Response. No change has been made. Title I migrant education grants are awarded to State educational agencies for programs designed at that level.

§ 116d.38 *Supporting services.*

Comment. Eight commenters requested a clarification of the circumstances under which support services may be provided.

Response. No change has been made. As under the interim final regulations, § 116d.38(a) provides that, in general, "health, welfare, or other supporting services [may be provided] with title I migrant education funds, but only if these services are necessary to enable eligible migratory children to participate effectively in instructional services." The instructional services referred to need not be funded by title I.

However, the more restrictive conditions under which title I migrant education funds may be used to support day care services are stated in § 116d.38(b).

The Commissioner believes that § 116d.38(a) establishes a simple, workable standard. It is not possible to describe every circumstance in which title I-funded support services may be provided.

Comment. Eight commenters said these regulations should permit a more liberal use of title I funds to support day care services.

Response. No change has been made. As the preamble to the interim final regulations noted (42 FR 36079), the title I statute establishes the migrant program as an "educational" program, which the Office of Education interprets as a program of instruction. Therefore, support services, including day care services, are permitted only

to the extent that they are necessary to support attendance in an instructional program. In the case of day care services, the instructional services must be supported by title I.

Section 116d.38(b) does not alter the conditions under which title I supported day care services may be provided. However, these final regulations delete § 116d.38(c) of the interim final regulations. Given the criteria stated in § 116d.38(b), the types of information which an SEA must provide in its State application are self-evident.

§ 116d.40 *Cooperative programs.*

Comment. Thirty-two commenters recommended strengthening the requirement for interstate coordination of programs and projects. Six commenters said the regulations should encourage the interstate exchange of academic credits. Three commenters suggested requiring SEA's to share needs assessments and other program documents. Four commenters encouraged interstate reciprocity in the certification of migrant educators. One commenter requested examples of interstate coordination.

Response. A change has been made. These final regulations contain a suggested list of interstate and intrastate cooperative efforts intended to foster continuity in the education of migratory children. Thus, § 116d.32(h)—which otherwise is substantially similar to § 116d.31(b)(7) of the interim final regulations—provides that a State application must contain an "explanation of the steps the SEA will take to assure the most continuity practicable in the education of the migratory children to be served, such as the exchange of course credits, both within and among States, and the intrastate and interstate sharing of program planning, evaluation, curriculum, and staff training materials." This explanation must also describe "the information that the SEA will pass on to other SEA's, regarding the migratory children, other than through the migrant student record transfer system."

As in the interim final regulations, § 116d.39(f) provides that one criterion for approval of a State's application is that the SEA's "plan for assuring continuity in the education of migratory children includes appropriate procedures for coordinating its State program with programs in other States. * * *" Also, § 116d.10(b) clearly indicates that the intrastate and interstate coordination of programs and projects is a permissible use of title I migrant education funds.

A program assisted by these funds is designed by an SEA in response to the special educational needs of the migratory children who live in that State. Accordingly, it is felt that each SEA is best able to devise the precise means of effectively coordinating its programs with other programs and projects so as to provide continuity in the education of migratory children.

The Office of Education has no authority to regulate with respect to the licensing or certification of migrant educators.

Comment. Seven commenters said that the regulations should contain a section on the privacy and information rights of participating children and their parents.

Response. A change has been made. Section 116d.32(k) requires that a State application contain an assurance that the SEA will "transfer the educational records of the migratory children participating in the State program in accordance with the Family Educational Rights and Privacy Act of 1974 and part 99 of this chapter (Privacy Rights of Parents and Students)."

GENERAL

Comment. One commenter recommended that these regulations include a statement of philosophy and intent for the program.

Response. No change has been made. A general statement of program philosophy would not be sufficiently precise to provide guidance and is not appropriate for regulations. The purposes of the title I migrant education program are clearly expressed in section 122 of the Act and in these regulations.

Comment. Several commenters suggested that these regulations should include the sections of the general title I regulations (part 116), the General Education Provisions Act, and the Office of Education General Provisions Regulations that apply to the title I migrant education program, or that are incorporated by these regulations.

Response. No change has been made. The purpose of part 116 and the Office of Education General Provisions Regulations is to avoid unnecessary repetition of regulatory provisions that apply to a variety of Federal education programs.

Comment. Two commenters requested that these regulations be written in simpler language. One commenter recommended that these regulations include examples, when helpful, to clarify individual requirements.

Response. A change has been made. These final regulations have been prepared according to the Department of Health, Education, and Welfare's Operation Common Sense. Where appropriate, examples have been included.

Comment. One commenter recommended that the requirement for financial and performance reports be deleted.

Response. No change has been made. The reports required by subparts P and Q of part 100b are authorized by section 434(b) of the General Education Provisions Act and OMB Circular No. A-102. They are necessary to maintain proper accountability.

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